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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE PAYMENT OF THE TAX ON MINERAL INTERESTS ASSESSED PURSUANT TO MINN. STAT. § 273.13, SUBDIVISION 2a, AND REMAINING DELINQUENT ON THE FIRST MONDAY IN JANUARY, 1977, 1978 AND 1979, FOR THE COUNTY OF ST. LOUIS, STATE OF MINNESOTA.

COUNTY OF ST. LOUIS, STATE OF MINNESOTA,
and
MINNESOTA CHIPPEWA TRIBE,
Petitioners,

v.

THE FEDERAL LAND BANK OF SAINT PAUL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

Does 12 U.S.C. § 2055, which exempts Federal Land Banks from all federal, state and local taxes other than those on real estate, prohibit a fair, non-discriminatory tax on Land Bank real estate assessed by state or local governments if that tax is not strictly and mathematically related to value?

The Minnesota Supreme Court, Justice Yetka dissenting, ruled in the affirmative and reversed the Minnesota Tax Court.

PARTIES TO THE PROCEEDING

County of St. Louis, State of Minnesota and Minnesota Chippewa Tribe (Petitioners).

Federal Land Bank of St. Paul (Respondent).

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Federal Statutes

12 U.S.C. § 2055. Taxation

Every Federal land bank and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land banks and the notes, bonds, debentures, and other obligations issued by the banks or associations shall be deemed and held to be instrumentalities of the Government of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (section 742(a) of Title 31).

Pub.L. 92-181, Title I, § 1.21, Dec. 10, 1971, 85 Stat. 590.

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OPINIONS BELOW

The official reports and unreported opinions delivered in the courts below are:

St. Louis County, State of Minnesota, and Minnesota Chippewa Tribe v. Federal Land Bank of St. Paul, 338 N.W.2d 741 (Minn., Oct. 7, 1983). Appendix A-1

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As noted above, all of the above opinions are reproduced in the Appendix.

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is for review of the judgment of the Minnesota Supreme Court entered Oct. 7, 1983; petition for reargument denied November 16, 1983.

Jurisdiction of the Supreme Court is conferred by Title 28, Sections 1257(3) and 2101(c) of the United States Code. A substantial federal question exists when the issue before the Court is whether a state law authorizing the taxation of certain property as real property is included within the scope of a federal statute authorizing state and local taxation of real property owned by a federal instrumentality. *Reconstruction Finance Corporation v. Beaver County, Pa.*, 328 U.S. 204, 66 S.Ct. 992, 90 L.Ed. 1172 (1946). The wording of 12 U.S.C. § 2055, the federal statute at issue in the present case, is virtually identical to the wording of 15 U.S.C. § 610, the federal statute at issue in the *Reconstruction Finance Corporation case*, which provided that "any real property" of the Reconstruction Finance Corporation or its subsidiaries "shall be subject to State, Territorial, County, municipal, or local taxation *to the same extent according to its value* as other real property is taxed". (Emphasis added)

STATEMENT OF THE CASE

A. Summary.

Minnesota law authorizes local governments to impose a tax of $.25 per acre on real property interests known as "severed mineral interests".[1] In 1979 the Minnesota Supreme Court upheld the constitutionality of this tax in a challenge brought by United States Steel Corporation and others in a case entitled *Contos, et al. v. Herbst, et al.*, 278 N.W.2d 732 (Minn., Jan. 1979), *rehearing denied*, March 13, 1979; hereafter referred to as "*Contos*" (Appendix A-40). An appeal of that decision to the United States Supreme Court was dismissed in the fall of 1979, *sub nom. Prest v. Herbst*, 444 U.S. 804. Notwithstanding the *Contos* decision, the Federal Land Bank of St. Paul subsequently challenged the $.25 per acre tax as that tax was assessed against severed mineral interests owned by the Bank. This petition arises out of that challenge.

A mineral interest in real estate which is "severed" is defined as an interest in minerals which is owned separately and apart from the fee title to the surface of such real property. For Minnesota real estate tax purposes, severed mineral interests which are not subject to taxation under any of the other elements of Minnesota's mineral classification and tax system are subject to an annual tax of $.25 per acre.[2] As so classified, this $.25 per acre tax is a tax of last resort.

In the fall of 1983, the Minnesota Supreme Court, with Justice Yetka dissenting, struck down the $.25 per acre severed mineral tax in all instances where it had been assessed

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[1] Minn. Stat. §§ 272.039, 272.04, subd. 1, and 273.13, subd. 2a (1982) (Appendix A-75-A-77).

[2] Minn. Stat. § 273.13, subd. 2a (1982) (Appendix A-77).

in Minnesota against real estate owned by the Federal Land Bank of St. Paul. *St. Louis County, State of Minnesota, and Minnesota Chippewa Tribe v. Federal Land Bank of St. Paul*, 338 N.W.2d 741 (Minn., Oct. 7, 1983), hereafter referred to as "*St. Louis County*" (Appendix A-1). On November 16, 1983, the Minnesota Supreme Court denied a petition for rehearing requested by St. Louis County, the State, and the Chippewa Tribe (Appendix A-12). As will be discussed in greater detail below, although the Minnesota Supreme Court agreed with the Tax Court that the $.25 per acre tax was fair and that it was applied without discrimination to both federal land bank property and to non-bank property, the supreme court reversed the Tax Court solely because the supreme court interpreted the federal statute in question, 12 U.S.C. § 2055, as mandating that local taxes assessed against federal land bank real estate must be strictly related to value, "ad valorem", in order to be valid. The supreme court ruled the $.25 per acre tax to be "outside the *letter* of the waiver" of tax exemption under § 2055 (*St. Louis Co.*, Appendix A-6). The exemption found by the Minnesota Supreme Court is a statutory exemption, not a constitutional exemption. The narrow interpretation placed by the court upon the waiver of tax exemption for federal land bank real estate found in 12 U.S.C. § 2055 severely limits the authority of local governments to tax real estate, the primary tax base for local government. This is a substantial question of federal law which should be settled by the United States Supreme Court. *Reconstruction Finance Corporation v. Beaver County, Pa.*, 328 U.S. 204, 66 S.Ct. 992, 90 L.Ed. 1172 (1946). This petition is requested for the purpose of reversing the decision of the Minnesota Supreme Court in the *St. Louis County* case.

B. Statutory, Administrative, and Judicial History of Minnesota's Tax On Severed Mineral Interests.

The $.25 per acre tax on severed mineral interests was authorized by the Minnesota Legislature in 1973.[3] The tax is levied by local taxing districts.[4] It was first levied in 1975 and first became payable in 1976. Revenues from the tax are apportioned to local taxing districts located within the area taxed in the same proportion as a taxing district's surface interest mill rate bears to the total surface mill rate for the area,[5] except for 20 percent of the total revenue which is deposited in a special account in the state treasury called the "Indian business loan account".[6] This account was created by the 1973 act for the purposes of making business loans to American Indians. The Minnesota Chippewa Tribe is a party to this litigation because of its ongoing interest in the integrity of this business loan account. The Federal Land Bank of St. Paul refused to pay the $.25 per acre tax on its severed mineral interests owned in St. Louis County when the tax became payable in 1976 and has refused to pay each year since. The Land Bank owns approximately 484,000 acres of severed mineral interests in 85 of Minnesota's 87 counties,[7] and similarly has refused to pay the tax in all other counties where assessed.

In October of 1974, after enactment of the tax but shortly before it was first assessed in 1975, the tax was challenged in St. Louis County district court on constitutional and other

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[3] Minn. Laws 1973, ch. 650, art. 20. The tax provisions of that act have been coded primarily as Minn. Stat. §§ 272.039, 272.04, subd. 1, and 273.13, subd. 2a, all of which are reprinted in the Appendix.

[4] Minn. Stat. §§ 272.04 and 273.13, subd. 2a (Appendix A-77).

[5] Minn. Stat. § 273.13, subd. 2a (Appendix A-77).

[6] Minn. Stat. § 116J.64 (Appendix A-72).

[7] *St. Louis County*, Appendix A-6. The Bank owns no severed mineral interests in Nobles or Waseca Counties.

grounds by United States Steel Corporation, Burlington Northern, Inc., Boise Cascade Corporation, First and Northwestern National Banks of Minneapolis, and by other corporate and individual plaintiffs in the *Contos* case, supra. After exhaustive hearing, argument, and briefing in both the district and supreme courts, the $.25 per acre tax on severed mineral interests was upheld in all respects by the Minnesota Supreme Court. In *Contos* the Minnesota Supreme Court affirmed a district court judgment which ruled, among other things, (1) that the $.25 per acre tax was valid in all respects; (2) that all severed mineral interests had value as real property interests, no matter where located; and (3) that the tax validly implemented the public purpose stated in Minn. Stat. § 272.039 of plugging a tax loophole that had created "a class of property having some value [that] was not paying its proportionate share of taxes," *Contos*, Appendix A-53.

The Federal Land Bank of St. Paul chose to stand apart from the *Contos* litigation. Instead, it refused to pay the $.25 per acre tax and allowed its 484,000 acres of severed mineral interests throughout the state to become tax-delinquent. However, to forestall tax-forfeiture of these mineral interests, it filed an Answer in tax delinquency proceedings with the district court of each county in which forfeiture proceedings had been commenced, requesting that such proceedings be postponed until *Contos* was finally decided. Its Answer to St. Louis County tax delinquency proceedings was contained in a letter dated April 29, 1977, addressed to the Clerk of St. Louis County District Court, (Appendix A-36). Essentially the same letter and Answer was sent to all other district courts. The Answer admits the tax delinquency but asserts two defenses: (1) unconstitutionality of the tax, and (2) statutory exemption under 12 U.S.C. § 2055, because the real

estate tax in question is not strictly "ad valorem." Delay was requested because of the pending decision in *Contos*. When the United States Supreme Court dismissed the *Contos* appeal in late 1979, tax delinquency proceedings against the Bank were reinstated in various counties throughout the state, and the Bank chose to use the St. Louis County delinquency proceeding as a test case. The matter was transferred by the district court for St. Louis County to the Minnesota Tax Court for trial. There the Bank was permitted to relitigate all of the constitutional questions decided in *Contos* as well as assert its defense based on its claim of statutory exemption. The Minnesota Chippewa Tribe joined St. Louis County and the state in opposing the Bank's effort to escape the tax, which by then was being paid by all other owners of severed mineral interests. The Minnesota Tax Court, after exhaustive proceedings, issued three significant orders: July 23, 1980 (Appendix A-27); October 31, 1980 (Appendix A-22); and March 19, 1982 (Appendix A-13). In these successive orders and associated memoranda the Tax Court rejected all of the Bank's arguments and defenses, including its claim of statutory exemption under 12 U.S.C. § 2055. In sum, the Tax Court ruled as follows: (1) that the tax was constitutional in all respects, as was determined by the *Contos* courts (*see*, especially, July 23, 1980 and October 31, 1980 Orders); (2) that severed mineral interests owned by the Land Bank of St. Paul had value as a real property right, no matter where located in Minnesota, the same as was held in *Contos* (*see*, especially, March 19, 1982 Order); and (3) that the Bank acquired these mineral interests by first foreclosing on defaulted farm mortgage loans it had made to rural residents and then by retaining the mineral interests when it resold the foreclosed farms, thus "severing" the mineral interests from the surface. The

Tax Court found that this policy of severing and retaining mineral interests was adopted by Bank directors "with the hope of ultimately recovering all or a part of these losses (on defaulted loans) through eventual mineral development" and that in recent years these mineral interests were never sold back to surface owners, except in extremely rare circumstances (*see*, especially, March 19, 1982 Findings, Order and Judgment); and (4) that 12 U.S.C. § 2055 "read in its entirety indicates a congressional intent to have Federal land banks pay all local real estate taxes on the same basis and to the same extent that other owners are taxed" and further that § 2055 does not compel or contemplate a result which "would give Federal land banks a special immunity from non-discriminatory real estate taxes," (July 23, 1980, Order and Memo, page 7).

Upon the Bank's appeal of the adverse rulings of the Tax Court to the Minnesota Supreme Court, that court agreed with substantially all of the Tax Court determinations described above. For example, the supreme court found that the Bank "has neither pleaded nor proved that the tax on severed mineral interests . . . discriminates against the Bank.[8] *Nor has the Bank convinced us that the tax is unfair. Indeed we agree that the nondiscriminatory tax in question ought to be deemed to come within the basic spirit of the congressional waiver of immunity from tax contained in 12 U.S.C.*

[8] The Federal Land Bank of St. Paul, as a federally chartered farm mortgage lending institution organized under the Federal Farm Loan Act of 1916 (Act of July 17, 1916, Ch. 245, 39 Stat. 360) and operating in Minnesota, Michigan, North Dakota, and Wisconsin, is owned by 55 member banks called "association banks", which in turn are owned by stockholders who are borrowers from the association banks. Net profits flow through the Federal Land Banks of St. Paul and its member banks to the stockholders in the form of dividends or lower interest rates on loans.

§ *2055." St. Louis County*, Appendix A-7; (emphasis added). The supreme court then went on to state (there being no known precedents under § 2055)[9] that the clause "according to its value" in § 2055 limits state and local taxes on Land Bank property to "ad valorem" taxes; that is, those taxes directly and precisely related to the value of the property, an element the court found absent in the case of this extremely modest $.25 per acre tax.

Your Petitioners urge this Court to reject this unprecedented, and narrow interpretation of § 2055 for reasons first expressed by the Minnesota Tax Court and then succinctly summarized in the supreme court by Justice Yetka, in his dissent, quoted in its entirety below:

> YETKA, Justice (dissenting).
>
> I dissent. I believe the minimum tax per acre is an ad valorem tax. I see no necessity that an ad valorem tax be a perfect tax—one based exactly according to market value. It would be difficult for the state to measure the value of minerals on each parcel without drilling and testing. Therefore, it sets a minimum tax per acre on

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[9] There is no disagreement that Minnesota's $.25 per acre tax on severed mineral interests is a tax on real estate. None of the reported decisions relating to Federal land banks involve taxes on real estate. The following taxes, none of which were real estate taxes, were struck down by the courts as being within the scope of prohibited taxes described in 12 U.S.C. § 2055 or similar statutes: (1) State *royalty tax* on gas and oil produced from mineral estates owned by a Federal land bank, Federal Land Bank of St. Paul v. North Dakota, 274 N.W.2d 580 (N.D. 1979); (2) State *sales tax* on building materials bought to repair and improve mortgage foreclosed buildings owned by a Federal land bank, Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95 (1941); (3) State *personal property tax* on oil and gas leases, and royalties derived therefrom, relating to property owned by a Federal land bank, Federal Land Bank of Wichita v. Bd. of County Commrs., 368 U.S. 146 (1961).

those reserving such minerals. Presumably, in reserving minerals, the owner is recognizing some value. When the tax is not discriminatory and is for such a modest amount, I believe it is reasonable to read section 2055 as permitting the state to collect the tax.

St. Louis County v. Federal Land Bank, Appendix A-11.

ARGUMENT FOR GRANTING THE WRIT

A. LEGISLATIVE HISTORY SUPPORTS MINNESOTA'S FAIR, NON-DISCRIMINATORY TAXATION OF FEDERAL LAND BANK SEVERED MINERAL INTERESTS.

Federal land banks are exempt from federal, state, municipal, and local taxation except taxes on real estate, pursuant to 12 U.S.C. § 2055, which reads as follows:

> Every Federal land bank and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, *except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed.* The mortgages held by the Federal land banks and the notes, bonds, debentures, and other obligations issued by the banks or associations shall be deemed and held to be instrumentalities of the Government of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (section 742(a) of Title 31).

(Emphasis added) Although this language was enacted by the Farm Credit Act of 1971 (Public Law 92-181, Title I, § 1.21, 85 Stat. 590), it is a re-enactment of language contained in section 26 of the Federal Farm Credit Act of 1916 (Act of July 17, 1916, ch. 245, 39 Stat. 360, § 26).

Congressional debate surrounding both the 1916 and 1971 enactments demonstrate, without qualification, that Federal land bank real estate is subject to fair, non-discriminatory real estate taxation. Neither the Minnesota Supreme Court majority in the *St. Louis County* case nor the Federal Land Bank of St. Paul have produced any legislative history to support their conclusion that the only valid real estate tax which may be assessed against Federal land bank real estate under § 2055 is one which is strictly "ad valorem." On the contrary, congressional debate in both 1916 and 1971 focused on the question of whether the benefits conferred upon Federal land banks through tax exemption are outweighed by the harm done to other segments of the economy, all the while assuming state and local taxation of Federal land bank real estate.

The legislative history of the Federal Farm Loan Act of 1916 is illustrative. The Senate bill, S. 2986, section 29, granted tax exemption to Federal land banks, except for real estate taxes. Sen. Dillingham, Vermont, warned against the dangers of tax exemption as follows:

> If the amount of mortgages, we will say, in the next 10 years is to double and one class of them is to be exempted from taxation, which must run from 1 to 2 percent, it will be seen at a glance that anybody in competition with this system will suffer extremely.
>
> I do not know how it is in other sections of the country, but in New England I think our taxes average from

> 1-1/2 to 2 percent, and if they stand at either the figures I have given, this aggregation—that is the aggregation provided by this bill—it seems to me, will be able to drive all others out of business, and we will find a double cause of trouble in it from the fact that we will be taking money from the people in the form of taxes, the benefit of which they have a right to enjoy. It will take a large amount of property out of taxation, and when that is taken out other classes in the community will have to pay the deficit that has thus been created. In addition to that, it is a direct attack upon established institutions in which there has been invested a vast accumulation of money.

53 Cong. Rec. 6798 (1916).

Senator Cummins, Iowa, stated that if Congress exempted property from state taxation and if it did so for all government functions, it would never create such corporations since to do so

> would withdraw from taxation throughout the country so large a proportion of its real wealth that the suggestion becomes intolerable, it would not be considered for a single moment.

53 Cong. Rec. 7306 (1916).

Senator Hollis, New Hampshire, made the following comments in regard to non-exemption of real estate:

> We buy from the citizens of a State, from the owners, a certain tract of land, and we put up a post-office building on it. That is exempt from taxation. That is discrimination against every other piece of real estate that does pay taxes, but we do it *and we could do it here.* If it seems wise to Congress in establishing a useful instrumentality—one that will exist and be powerful enough

> to be of some service to the Government—Congress may exempt its real estate if it wants to, *but I think that would be very poor policy*.

53 Cong. Rec. 6966 (1916) (emphasis added). Senator Hollis later commented that mortgage foreclosed property would be subject to real estate taxes under the Senate bill. 53 Cong. Rec. 7021 (1916).

In the House, the bill under consideration also granted tax exemption, except for real estate taxes. A conference committee appointed to consider differences between the Senate and House bills made the following report in regard to tax exemptions:

> The Senate accepts the House provision permitting the local taxation of real property of joint stock banks, *and it is further agreed that the real property of Federal land banks and national farm loan associations may be subject to local taxation.*

53 Cong. Rec. 10104 (1916) (emphasis added). Nowhere does this contemporaneous legislative history surrounding the enactment of the Federal Farm Loan Act of 1916 hint that only "ad valorem" local real estate taxes would satisfy this provision.

In 1971, the debate surrounding the enactment of the Farm Credit Act of 1971 followed a similar pattern. Senator Talmadge, on behalf of the Committee on Agriculture and Forestry, led the debate on S. 1483 on the floor of the Senate. He made the following comment concerning tax exemption for the Federal land banks:

> [T]he question of the taxation of the Federal land banks was raised during the hearings. The committee weighed carefully the evidence related to *taxation* and reserve

> requirements, *both of which remained unchanged in the act.* After examining these concerns, the committee concluded that the problem raises committee jurisdictional questions, but that it would be appropriate for the Finance Committee to undertake a separate review of the tax and reserve obligations of the land banks to determine equitable treatment as compared to other lending institutions.

117 Cong. Rec. 27992 (1971) (emphasis added).

The questions referred to by Sen. Talmadge were those raised by the private financial community. The Report of the Senate Subcommittee on Agricultural Credit and Rural Electrification on S. 1483, the Farm Credit Act of 1971, in relation to hearings held on May 17, 18, and 20, 1971, contains at page 451 a letter from E. A. Jaenke, the Governor of the Farm Credit Administration, to Subcommittee Chairman Sen. McGovern, dated May 28, 1971, which contains the following response to the concerns of the private financial community:

> *Criticism*: The Independent Bankers Association of America, the American Bankers Association, the Mortgage Bankers Association of America, the American Life Commission, and the Life Insurance Association of America all raised questions regarding the taxation of the Federal land banks and their reserve requirements as compared with those of other lending institutions.
>
> *Comment*: The taxation of the Federal land banks and their related reserve requirements should not be an issue in this legislation. The Farm Credit System has assured Senator Russell B. Long and Congressman Wilbur Mills, chairmen of their respective tax-writing committees, and assures this committee, of its willingness to testify when these committees consider tax legislation.

> However, it is appropriate that an explanation of the tax exemption and reserve requirements is rendered since the question was raised.
>
> *From the beginning*, both the Federal land banks and Federal land bank associations have been exempt from Federal, state and local taxes, *except for state and local taxes imposed on real property.* * * *"

Report, p. 459 (emphasis added).

As with the 1916 legislation, this contemporaneous legislative history surrounding the enactment of the Farm Credit Act of 1971 nowhere suggests that only "ad valorem" local real estate taxes would satisfy § 2055, which was expressly stated to be a continuation of the 1916 enactment. Farm Credit Governor Jaenke's statement that Federal land banks do, in fact, pay state and local taxes on real estate, as contained in his letter to Senator McGovern (the letter in which he justified other tax exemptions for Federal land banks) contains no qualifiers, no reservations, and no shadings of meaning. It amounts to a straightforward promise to pay state and local real estate taxes in consideration of retaining the Federal land banks' existing tax exemptions.

Governor Jaenke and members of the Congress took the only practical and responsible position available to them in regard to state and local taxes on Federal land bank property. They all knew in 1971 that the thousands of state and local real estate taxing authorities levied a wide variety of real estate taxes; some were strictly and mathematically related to value, *i.e.*, "ad valorem"; others were not; and still others were somewhere in between.

Furthermore, Congress as well as state and local taxing authorities knew in 1971 that the United States Supreme Court had made it clear for many years, in no uncertain terms, that the Court did not favor federal policy which *requires* or

mandates states to impose strict "ad valorem" real property taxes. Exactly the opposite is true; wide latitude is granted to state and local taxing authorities when they impose fair, non-discriminatory taxes.

> The States in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the Fourteenth Amendment, *but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation.* The State may tax real and personal property in a different manner. It may grant exemptions. *The State is not limited to ad valorem taxation.* It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, *the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.* To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure . . . .

Ohio Oil Co. v. Conway, 281 U.S. 146, 159 (1930) (emphasis added). Similar language appears in decisions as old as *Bells Gap R. Co. v. Pennsylvania*, 134 U.S. 232 (1890), and as new as *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973). The Court in *Ohio Oil Co. v. Conway, supra*, went on to rule that

> the State was not required to grade its tax with a nicety which would assign to every oil produced a grade absolutely corresponding to its actual value. *That would mean*

> *that the State could tax only on a strictly ad valorem basis, a contention wholly inadmissible.*

281 U.S. at 161 (emphasis added).

The effect of the rule adopted by the majority in the *St. Louis County* case is, in the words of the United States Supreme Court in *Ohio Oil Co.*, "to subject the essential taxing power of the State [of Minnesota] to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to ensure." Consistent with the above principle, the *Contos* court specifically found that real estate taxes in Minnesota have not been required to be strictly "ad valorem" since 1906. (Appendix A-55)

The rule adopted by the majority is also contrary to the rule of *Reconstruction Finance Corporation, supra* as reaffirmed on December 13, 1982, in *Federal Election Commission, et al. v. National Right to Work Committee, et al.*, —— U.S. ——, 51 U.S.L.W. 4037, 4039, 74 L.Ed.2d 364, 373, 103 S.Ct. —— by a unanimous court speaking through Justice Rehnquist:

> ". . . [W]here Congress had authorized state taxation of 'real property' of subsidiaries of the Reconstruction Finance Corporation, the Court said:
>
> > 'We think the congressional purpose can best be accomplished by application of settled state rules as to what constitutes 'real property' so long as it is plain, as it is here, that the state rules do not effect a discrimination against the Government, or patently run counter to the terms of the Act.' *Reconstruction Finance Corporation v. Beaver County, Pa.*, 328 U.S. 204, 210, 90 L.Ed. 1172, 66 S.Ct. 992 (1946)."

From all of the above, it is clear that Congress never intended 12 U.S.C. § 2055 to prohibit Minnesota's fair, nondiscriminatory $.25 per acre tax on severed mineral interests.

B. MINNESOTA'S TAX OF $.25 PER ACRE ON SEVERED MINERAL INTERESTS IS SUFFICIENTLY RELATED TO THE VALUE OF THOSE INTERESTS TO SATISFY 12 U.S.C. § 2055.

12 U.S.C. § 2055 permits local taxes on Federal land bank real estate "to the same extent, according to its value, as other similar property held by other persons is taxed".

As previously mentioned, the Minnesota Tax Court ruled that the $.25 per acre severed mineral tax was validly applied to Bank owned severed mineral interests under 12 U.S.C. § 2055. In so ruling, the Tax Court relied upon the *Contos* decision, which upheld the constitutionality of the $.25 per acre tax on severed mineral interests in all respects. In its decision in *Contos*, the Minnesota Supreme Court firmly established that severed mineral interests not otherwise taxed are valuable property rights. In *Contos*, U.S. Steel and other plaintiffs owned over 1 million acres of severed mineral interests scattered throughout the state. The *Contos* court affirmed district court findings related to value of severed mineral interests as follows:

> ". . . [T]he district court found that *every mineral interest in Minnesota has some value as a property interest regardless of its location*, although the value of mineral interests may vary from one part of the state to another."

Contos, (Appendix A-51.) (emphasis added);

(2) "[t]aken together with the district court's finding that *every mineral interest has some value as a property*

> *interest regardless of its location*, the uniform tax imposed on severed mineral interests represents a reasonable exercise of the legislature's authority to tax a class of real property that has escaped taxation."

Contos, (Appendix A-56.) (emphasis added);

> (3) "[t]he record clearly establishes that severed mineral interests were not paying any taxes, that some severed mineral interests were created to avoid ad valorem taxation, and *that severed mineral interests have some value*. The legislature's response, *which assures that all severed mineral interests will pay at least some tax*, is not unreasonable as an exercise of its power to tax."

Contos, (Appendix A-57, note 5.) (emphasis added).

The Minnesota Tax Court, in its March 19, 1982 Order granting summary judgment against the Bank and affirming the $.25 per acre on 484,000 acres of Bank-owned severed mineral interests scattered throughout the State, made the following findings:

> "13. The present policy of the Bank is never to sell it severed mineral interests [acquired through foreclosure of farm mortgages] except in situations where refusal would work undue hardship or release would be to the Bank's advantage, and then only for valuable consideration.
>
> 14. Since 1973 the Bank has received a low of $100 for 632 acres in Clay County ($.15 per acre), to a high of $100 for two acres in Kandiyohi County ($50 per acre) for selling or releasing mineral rights.
>
> 15. Since March 1975 the Bank has had a policy of never selling severed mineral interests for less than $1.25 per acre.
>
> . . .

17. Every mineral interest has some value as a property right regardless of its location, although the value of an interest in one part of the state may vary from that in another." Tax Court Order, March 19, 1982, Appendix A-16.

The Tax Court then concluded that its finding that every mineral interest owned by the Bank has some value, brings the case within *Contos*, and that the mineral interests are therefore "fully subject to tax under Minn. Stat. § 273.13, subd. 2(a)". Tax Court Order, March 19, 1982, Appendix A-17. It is important to notice that the $.25 per acre tax is assessed under the terms of § 273.13, subd. 2a, only if no other mineral tax has been imposed on the mineral interest. The portion of the *Contos* opinion upon which the Tax Court was relying described the interrelationship between severed mineral interests valued and taxed under § 273.13, subd. 2(a), and mineral interests valued and taxed under other laws, as follows:

> "A class of property [severed mineral interests] having some value was not paying its proportionate share of taxes. The remedy chosen by the legislature was to tax mineral interest on a uniform basis, *which is but one part of the general system of mineral taxation.* The tax is imposed *only on those mineral interests not "valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil or other similar interest."* Minn. Stat. 273.13, subd. 2a." *Contos*, Appendix A-53.

In short, the *Contos* court recognized, first of all, that severed mineral interests not otherwise taxed possess value as an interest in real property and then, secondly, approved of classifying these interests in a separate, minimum tax, classification.

In the instant case, (*St. Louis County*), the Minnesota Supreme Court majority nowhere expressly disagrees with the Tax Court or the *Contos* court in regard to any of the above. In fact it specifically agrees that no discrimination has been pleaded or proved against the Bank, that no unfairness has been found, and "that the nondiscriminatory tax in question ought to be deemed to come within the basic spirit of the Congressional waiver of immunity from tax contained in 12 U.S.C. § 2055". *St. Louis County*, 338 N.W.2d 743, Appendix A-6. The majority disagrees with the Tax Court solely because it believes that § 2055 requires that local real estate taxes must be strict "ad valorem" taxes and that the $.25 per acre is tax is not such a tax. The difficulty with the majority's position is that § 2055, as written, does not impose such a strict standard; rather, it is the technical interpretation placed upon the statute by the majority that imposes the standard. The *Contos* opinion relied upon by the Tax Court openly recognized that severed mineral interests included within the minimum value class established by § 273.13, subd. 2(a), were not valued on a purely "ad valorem" basis, but that the values of these interests were, nevertheless, sufficiently related to value to justify the tax, considering the practical taxing difficulties involved:

> ". . . [T]he district court found that most severed mineral interests cannot be assessed for ad valorem property tax purposes for two reasons:
>
> "'(1) The value of the mineral in the ground can only be determined by *prohibitively expensive exploration* such as drilling and drill core analysis; and
>
> "'(2) *Data currently available to assessors on sales and exchanges* of the property rights in mineral estates (i.e., severed mineral interests) *is very limited*. Therefore, in most cases such available data is insufficient to

> permit the derivation of market values for individual severed mineral interests from the sales prices or values of comparable interests." *Contos*, (Appendix A-50.) (emphasis added).

By so affirming this floor for mineral taxation in Minnesota, the *Contos* opinion relied upon by the Tax Court did no basic violence to the concept of "ad valorem" taxation.

In contrast, the majority in the present case, in rigidly insisting upon "ad valorem" taxation for severed mineral interests not otherwise taxed, gives no reason other than the "plain language" canon of interpretation for rejecting the tax. The majority makes no attempt to justify the absurdity of requiring local governments to spend hundreds of dollars on mineral interest valuation experts, or thousands of dollars on drilling and drill core analysis, on a tract of Bank owned severed minerals to prove what already has been proven; namely that the tract is worth *at least* $1.25 per acre pursuant to Bank policy of never selling for less than that amount, and occasionally selling for up to $50 per acre. *Minn. Tax Court*, Order, March 19, 1982, Findings 14 and 15 (Appendix A-16). In fact, the basic valuation principle the Bank applies to its severed mineral interests is that they are too valuable to sell because of the Bank's hope of "eventual mineral development" of their interests. *Minn. Tax Court*, Order, March 19, 1982, Findings 12 and 15, (Appendix A-16). No more valuation information than this is necessary to satisfy § 2055.

In the circumstances described above, the Federal Land Bank of St. Paul has no basis for complaint. In the words of the majority, the Bank's stockholders are being treated "fairly" and "non-discriminatorily" in all respects; just the same as U.S. Steel stockholders or Allison Contos in *Contos*.

The Bank, therefore, is not entitled to the majority's judicially created tax exemption based on technicality. To do so deprives local governments and Minnesota Indians of sorely needed revenue and grants the Bank unfair competitive advantage over other lending institutions, results never intended by Congress in enacting § 2055.

C. THE MAJORITY OPINION IN *ST. LOUIS COUNTY* FAILS TO CONSIDER THE "GOLDEN RULE" OF STATUTORY INTERPRETATION THAT UNREASONABLE INTERPRETATIONS ARE TO BE REJECTED IN FAVOR OF REASONABLE ALTERNATIVES.

Sutherland, Statutory Construction, 4th Ed., Volume 2A, states that "reasonableness" is the foundation for statutory interpretation:

> § 45.12. Reasonable interpretation.
>
> It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. (Citations omitted) It is said to be a "well established principle of statutory interpretation that the law favors rational and sensible construction" (Citations omitted).

Sutherland, in regard to the "literal" or "plain language" rule chosen by the *St. Louis County* majority in the present case, makes the following observation:

> . . . Declarations in favor of literal or "plain" meanings often are accompanied by disclaimers that statutes have been construed in arriving at meanings which are so characterized. (Citations omitted) As further explained,

> in the language of a court, "if . . . the intention of the legislature is perfectly clear from the language used, rules of construction are not to be applied." (Citations omitted) Statements of that nature imply that literal or plain meanings are meanings which are arrived at by considering nothing outside or beyond the "letter" or the statute itself. *What seems to be suggested is that, when he uses the approach of literalism, a judge puts on blinders, so to speak, in order to obscure from view everything but just the text of the statute whose effect on the matter at issue is in question . . . Sutherland, Vol. 2A*, § 46.02 Literal Meaning, p. 52.

Sutherland goes on to describe the limits of "literalism" in the following terms:

> . . . The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act. "While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words." (Citations omitted) *Sutherland*, Vol. 2A, § 46.07 Limits of Literalism, p. 65.

In its analysis of the language of § 2055, the *St. Louis County* majority, after admitting that the $.25 per acre tax "ought to be deemed to come within the basic spirit of the Congressional waiver of immunity" from state and local real estate taxation contained in § 2055, obscures from its view everything but the "plain language" of the statute. The

majority then reaches a conclusion that produces the following unreasonable results:

(1) The majority rejects a local real estate tax that it finds to be fair and non-discriminatory. In so doing it rejects the obvious interpretation, made by both the Tax Court and the dissent in *St. Louis County*, that all that § 2055 requires is that the tax be fair and nondiscriminatory. The majority decision is contrary to this Court's interpretation of similar language in *Reconstruction Finance Corp. v. Beaver Co.* (supra). Furthermore, the majority reasoning fails to recognize the fact that the $.25 per acre tax *is* related to value because the tax is applied only to those severed minerals that are included in the minimum value class, which is the tax class of last resort when no other mineral tax has been assessed. The majority opinion does not even consider the alternative possibilities that the words "according to its value" may be intended to prohibit local real estate taxes based solely on income derived from the property, or that the words may be disregarded as mere surplusage;

(2) The opinion of the majority is unreasonable because the effect of the opinion, in order to validly tax severed minerals under § 2055, is to require the Minnesota legislature to enact a new severed mineral tax law which requires precise mathematical "ad valorem" valuation of these property interests, a task the legislature has already found to be impossible, for all practical purposes, (Minn. Stat. § 272.039, Appendix A-75). Such a result is not favored by this Court under *Reconstruction Finance Corp.* (supra):

> "To permit the states to tax, and yet to require them to alter their long standing practice of assessments and collections, would create the kind of confusion and resultant hampering of local tax machinery *which we are certain Congress did not intend*". 328 U.S. 210 (emphasis added).

(3) Because of the practical impossibilities of precisely valuing severed mineral interests for "ad valorem" tax purposes, the majority opinion effectively deprives local governments of real property tax base consisting of 484,000 acres of severed mineral interests, thus eliminating another source of badly needed revenue for local governments and Minnesota Indians. In addition, this expanded exemption from local real estate taxation provides the Federal land banks with an additional competitive advantage over other lending institutions. Both of these consequences were viewed with disfavor in legislative debate surrounding enactment of the law;

(4) By depriving local governments of 484,000 acres of severed mineral interest tax base, the majority opinion unfairly shifts a tax burden imposed non-discriminatorily on Federal land bank property to other real estate taxpayers. The ironic result of such a shift is to add to the tax burden of other rural taxpayers such as farmers who are struggling to fend off federal loan foreclosures. Here it should be noted that on May 5, 1983, a federal district court in Bismark, N.D., in an unreported opinion, issued a temporary injunction which prevented the Farmers Home Administration from foreclosing on any more farm mortgages. *Coleman et al. v. Block, et al.*, D.C.N.D., S.W. Div. No. A1-83-47;

(5) The majority's conclusion that the words "according to its value" permits only strict "ad valorem" taxes is an unreasonably narrow interpretation that serves as adverse precedent for statutes containing similar language, such as 12 USC § 1433 (federal home loan banks), 12 USC § 1723 a(c)(1) (government national mortgage associations); and 12 U.S.C. § 3019 (a) (National Consumer Cooperative Bank).

(6) The majority opinion casts doubt on other local real estate taxes that are not strictly "ad valorem" that are assessed against real estate owned by the Bank. In Minnesota,

these include § 298.26, the tax on property interests containing deposits of taconite ore, which provides a $10 per acre *maximum* tax, if less than 1,000 tons of iron ore concentrates are not produced from a 40 acre tract in a year. Appendix A-78.

From all of the above it is clear that the majority decision is unreasonable and therefore violates the "golden rule" of statutory interpretation.

CONCLUSION

In *First Agricultural National Bank of Berkshire County, Mass. v. State Tax Comm.*, 392 U.S. 339 (1968) the U.S. Supreme Court disallowed a state sales and use tax imposed on purchases of personal property by a national bank. The statute in question, 12 U.S.C. § 548, was at that time worded almost identically to 12 U.S.C. § 2055. Notwithstanding the fact that the tax was a sales tax and the property was not real estate, Mr. Justice Marshall expressed his dissatisfaction with the situation as follows:

> "[T]he implied immunity of one government and its agencies from taxation by the other should, as a principle of Constitutional construction, be narrowly restricted. For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, and when that immunity is invoked by the private citizen it tends to operate for his benefit at the expense of the taxing government and without corresponding benefit to the government in whose name the immunity is claimed." 392 U.S. 362, 88 S.Ct. 2185.

Justice Marshal pointed out the similarities between federally chartered national banks and state banks and then concluded that the waiver of tax exemption under § 548:

> "was '*merely designed to insure that the inherent taxing powers which were recognized in that case—'e.g.*,

the power to tax the real property of the banks as well as the privately owned shares—be exercised in a nondiscriminatory fashion' (case cited)". (emphasis added) 392 U.S. 362, 88 S.Ct. 2185.

The present case is almost identical to *Reconstruction Finance Corp. v. Beaver County, Pa.* (supra), where this Court unanimously affirmed the Beaver County real property tax on defense plant machinery, under 15 U.S.C. § 610, a statute worded virtually the same as 12 U.S.C. § 2055, but which expressly prohibited local taxes on personal property:

". . . Congress in permitting local taxation of the real property, made it impossible to apply the law with uniform tax consequences in each state and locality. For the several states, and even the localities within them, have diverse methods of assessment, collection, and refunding. Tax rates vary widely. To all of these variable tax consequences Congress has expressly subjected the "real property" of the Defense Plant Corporation. In view of this express provision the normal assumption that Congress intends its law to have the same consequences throughout the nation cannot be made. Furthermore, Congress, had it desired complete nationwide uniformity as to tax consequences, could have stipulated for fixed payments in lieu of taxes, as it has done in other statutes. (footnote omitted) Nor can we see how application of a local rule governing what is "real property" for tax purposes would impair the Congressional program for the production of war materials any more than the program would be impaired by the action of Congress in leaving the fixing of rates of taxation to local communities.

We think the Congressional purpose can best be accomplished by application of settled state rules as to what constitutes "real property" so long as it is plain, as it is here, that the state rules do not effect a discrimination

against the government, or patently run counter to the terms of the Act. Concepts of real property are deeply rooted in state traditions, customs, habits, and laws. Local tax administration is geared to those concepts. To permit the states to tax, and yet to require them to alter their longstanding practice of assessments and collections, would create the kind of confusion and resultant hampering of local tax machinery which we are certain Congress did not intend. The fact that Congress subjected Defense Plant Corporation's properties to local taxes "to the same extent according to its value as other real property is taxed" indicated an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery.

Affirmed."

328 U.S. 209. (emphasis added.) The basic principle of the *R.F.C.* case has recently been reaffirmed in *Federal Election Commission, et al. v. National Right to Work Committee, et al.*, — U.S. —, 51 U.S.L.W. 4037, 74 L.Ed.2d 364, 103 S.Ct. —.

In the present case, there is no dispute that the $.25 per acre severed mineral tax is a tax on real estate. As with *Contos* plaintiffs, the Bank has severed and reserved its mineral interests for the purpose of realizing profits on future mineral development. As in *Contos*, profits from Bank operations inure to the benefit of private stockholders. The majority of the Minnesota Supreme Court below, in *St. Louis County*, determined that the tax was fair, nondiscriminatory, and recognized that it was in keeping with the spirit of the tax waiver of § 2055, but rejected the tax. If the majority's decision is allowed to stand, local governments and Minnesota Indians will be deprived of sorely needed revenue, and the Bank will be granted an unfair competitive advantage over other lending institutions, results never intended by Congress in enacting § 2055. Under all of these circumstances, the

majority opinion below deserves to summarily reversed under U.S. Sup. Ct. Rule 23, 28 U.S.C.A.

Your petitioners respectfully request that this petition for a writ of certiorari be granted.

February 9, 1984.

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APPENDIX

In the Matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minn. Stat. § 273.13, Subdivision 2a, and Remaining Delinquent on the First Monday in January, 1977, 1978, and 1979, for the County of St. Louis, State of Minnesota.

COUNTY OF ST. LOUIS,

Respondent,

and

MINNESOTA CHIPPEWA TRIBE,

Respondent,

C3-82-630, C4-82-846

v.

THE FEDERAL LAND BANK OF ST. PAUL,

Relator (C3-82-630),

Appellant (C4-82-846).

Nos. C3-82-630, C4-82-846.

Supreme Court of Minnesota.

Oct. 7, 1983.

In tax enforcement proceedings, Federal Land Bank claimed exemption from state severed mineral interest tax. The Tax Court upheld the tax as applied to the Federal Land Bank. On review by certiorari, the Supreme Court, Coyne, J., held that federal statute governing waiver of immunity from tax on real estate held by Federal Land Bank precluded imposition of the severed mineral interest tax on the Federal Land Bank, in that the tax was not an ad valorem tax.

Reversed.

Yetka, J., dissented with opinion.

* * * * *

Syllabus by the Court

A flat per-acre or per-interest tax on severed mineral interests, even though it is a nondiscriminatory tax on real estate, is not nondiscriminatory "according to its value" and therefore does not come within Congress' express waiver of the immunity of a Federal Land Bank from state taxes, 12 U.S.C. § 2055.

Dorsey & Whitney, William J. Hempel, John W. Windhorst, Jr., and Bruce Schnider, Minneapolis, for appellant, relator.

Hubert H. Humphrey, III, Atty. Gen., C. Paul Faraci, Deputy Atty. Gen., Philip J. Olfelt, Asst. Atty. Gen., St. Paul, for respondent State of Minn.

Alan L. Mitchell, County Atty., and Michael R. Dean, Asst. County Atty., Duluth, for County of St. Louis.

Tupper, Smith & Mattson, Kent P. Tupper, Walker, for respondent Minnesota Chippewa Tribe.

Heard, considered and decided by the court en banc.

COYNE, Justice.

This case involves a challenge by the Federal Land Bank of St. Paul (the "Bank") to taxes assessed under Minn. Stat. § 273.13, subd. 2a (1982) by several counties on severed mineral interests held by the Bank. The Bank claims that it is exempt from the tax for two reasons: (1) the tax is not a tax on real estate "according to its value," and the Bank is therefore exempt under a federal statute (12 U.S.C. § 2055); and (2) the tax is unconstitutional notwithstanding this court's decision in *Contos v. Herbst*, 278 N.W.2d 732 (Minn.), *appeal dismissed* sub nom. *Prest v. Herbst*, 444 U.S. 804, 100 S.Ct.

24, 62 L.Ed.2d 17 (1979). The Minnesota Tax Court upheld the tax as applied to the Bank, and the Bank appealed. We reverse on the basis of the federal statute and therefore do not reach the constitutional issue.

The Bank refused to pay the taxes assessed for the years 1975, 1976, and 1977 on its severed mineral interests in land in St. Louis County[1] and filed answers in the district court under Minn. Stat. § 279.15 (1982). The proceedings were transferred to the tax court under Minn. Stat. § 271.01, subds. 5 and 6 (1982). The state and the county (hereinafter "the state") appeared on behalf of enforcement of the tax. The Minnesota Chippewa Tribe subsequently intervened in the tax court proceedings as an interested party.[2]

Both the Bank and the state moved for summary judgment. On July 23, 1980, the tax court ordered summary judgment for the state, finding that the Bank was not exempt under 11 U.S.C. § 2055 and that any constitutional challenge was disposed of by *Contos*. On the Bank's petition for rehearing, however, the court ordered an evidentiary hearing limited to the factual issue whether some severed mineral interests are valueless, making a tax on all such interests unconstitutional.[3] Following the hearing, the tax court found as fact that every mineral interest has some value, although the value of mineral interests may vary from place to place within the state, and,

---

[1] The Bank paid taxes on one interest, but only as required by the county for the recording of a deed affecting surface rights.

[2] Under Minn. Stat. § 273.13, subd. 2a, 20% of the tax on severed mineral interests is put into a fund to be used for business loans to Indians. Minn. Stat. § 116J.64, subd. 6 (1982).

[3] The tax court found that the determination in *Contos* that all mineral interests have value was merely a determination that the district court's finding in that case was not clearly erroneous. Therefore, according to the tax court, the Bank in the present case had a right to try to prove otherwise.

relying on *Contos*, concluded that the tax was constitutional. Proceedings for review of the tax court decision by certiorari and the Bank's appeal from the judgment entered thereon have been consolidated.

I.

a. *Tax on Severed Mineral Interests.* The severed mineral interest is a type of estate in real property—the owner of the estate owns an interest in the minerals produced from the property but does not own the surface of the property. Minn. Stat. § 273.13, subd. 2a (1982). Severed mineral interests exist in much of Minnesota and are especially common in northeastern Minnesota. *Contos v. Herbst*, 278 N.W.2d at 735. In *Washburn v. Gregory Co.*, 125 Minn. 491, 147 N.W. 706 (1914), this court held that severed mineral interests are separate interests in land, taxable separately from the surface interest and do not forfeit to the state for nonpayment of taxes *on the surface interest*. The legislature subsequently found that the severed mineral interests themselves are rarely taxed because of assessment difficulties. Minn. Stat. § 272.039 (1982). Therefore, separate ownership of surface and mineral estates was practiced widely as a means of holding mineral rights indefinitely while remaining effectively immune from taxation and tax forfeiture.

The legislature cited the above factors as reasons for enacting the Mineral Registration Act in 1973, Minn. Laws 1973, c. 650, art. XX. Minn. Stat. § 272.039 (1982). The Act was designed to enforce the registration of severed mineral interests under § 93.52 (enacted in 1969) and to tax those interests. First, the Act added to § 93.55, providing that such interests would forfeit to the state if not registered within a specified period. Second, the Act imposed the tax involved in this case upon severed mineral interests not taxed under

other provisions. Minn. Stat. § 273.13, subd. 2a (1982).[4] Third, the Act explicitly provided that severed mineral interests are subject to forfeiture for nonpayment of the above tax. Minn. Stat. § 272.04, subd. 1 (1982).

In *Contos v. Herbst*, 278 N.W. 732 (Minn. 1979), plaintiff-owners of severed mineral interests (the plaintiffs included U.S. Steel and Burlington Northern Railroad) challenged the tax and registration forfeiture provisions of the Act. This court held that the tax was constitutional because (1) it was reasonable to classify severed interests separately from unsevered interests for taxation, and (2) property taxes need not be related to value. 278 N.W.2d at 736-41.[5]

b. *Federal Land Bank and Its Mineral Policies.* The Bank is a federally chartered instrumentality of the United States. One of twelve Federal Land Banks, it was established in 1917 pursuant to the Federal Farm Loan Act (Acts of July 17, 1916, chapter 245, 39 Stat. 360) and is presently governed by 12 U.S.C. §§ 2011-2055. The Bank provides long-term agricultural loans to farmers in Michigan, Minnesota, North Dakota, and Wisconsin. Each borrower becomes a member of a Federal Land Bank Association; the Associations own

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[4] Mineral interests which have been valued are taxed on the basis of value. Unmined iron ore is taxed on the basis of value pursuant to Minn. Stat. § 273.13, subd. 2, or § 273.15 (1982). Unmined taconites and iron sulphides are assessed and taxed according to value subject to a maximum tax of $10.00 per acre. Minn. Stat. § 298.26 (1982). All other severed mineral interests, to the extent they can be valued, are susceptible to ad valorem taxation pursuant to Minn. Stat. § 272.04 (1982).

[5] However, this court struck down as unconstitutional the forfeiture provisions because adequate notice and hearing were not provided. Minn. Stat. § 93.55 was subsequently amended to provide notice and a hearing before forfeiture. Minn. Laws 1979, c. 303, art. 10, § 1.

the stock of the Bank. The Associations are similar to cooperatives; the net earnings of the Bank eventually inure to its individual borrowers in the form either of dividends or of lower interest rates on their variable interest loans.

The Bank obtains severed mineral interests by reserving these interests when it sells any property upon which it has foreclosed. The Bank initiated this practice in the 1930's, when it foreclosed on many farms and could not recover the unsatisfied debt on resale. Most of the Bank's interests are 50% interests in perpetuity. The remaining 50% interests belong to the surface owners and are therefore *unsevered* interests. As of the end of 1980, the Bank owned about 3,200 mineral interests situated in 85 of Minnesota's 87 counties and covering about 484,000 gross mineral acres. These Minnesota interests have provided almost no mineral income for the Bank. It is the Bank's policy never to release or sell its severed mineral interests except to avoid hardship to the surface owner or expense to the Bank.

II.

The Bank has neither pleaded nor proved that the tax on severed mineral interests, Minn. Stat. § 273.13, subd. 2a (1982), discriminates against the Bank. Nor has the Bank convinced us that the tax is unfair.[6] Indeed, we agree with the tax court that the nondiscriminatory tax in question ought to be deemed to come within the basic spirit of the Congressional waiver of immunity from tax contained in 12 U.S.C. § 2055. Unfortunately, however, it is outside the letter of the waiver and we are, therefore, required to recognize the Bank's

[6] See *Contos v. Herbst*, 278 N.W.2d 732 (Minn. 1979) (this unique method of taxing severed mineral interests does not violate the uniformity clause of the Minnesota Constitution. Minn. Const. art. 10, § 1).

statutory immunity from the tax imposed by Minn. Stat. § 273.13, subd. 2a (1982).

Section 2055 provides, in relevant part:

> Every Federal land bank and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, *except taxes on real estate* held by a Federal land bank or a Federal land bank association *to the same extent, according to its value, as other similar property held by other persons is taxed.* * * *

(Emphasis added). The exemption from state taxation and attendant waiver of immunity were part of the Federal Farm Loan Act of 1916, Act of July 17, 1916, ch. 245, 39 Stat. 360.[7] Although the clause—"to the same extent, according to its value, as other real estate is taxed"—appeared for more than 100 years in the waiver of immunity contained in the National Banking Act.[8] and although the same clause appears in statutes exempting other federal instrumentalities from state taxation,[9] we are aware of no cases in which application of the waiver of immunity to a flat or area-based general

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[7] 12 U.S.C. § 2055 was adopted in 1971, Pub. L. 92-181, Title I, § 1.21, 85 Stat. 590, but the operative language involved here has remained substantially unchanged since 1916. 12 U.S.C.A. §§ 931, 933 (West 1969); Federal Farm Loan Act of 1916, ch. 245, 39 Stat. 360, § 26.

[8] The genesis of section 2055 is probably a section of the National Banking Act of 1864, Act of June 3, 1864, ch. 106, § 41, 13 Stat. 111, Rev. Stat., § 5219, which stated that national banks were exempt from state taxation, except taxes imposed on real estate "to the same extent, according to its value, as other real estate is taxed." This provision was carried forward in 12 U.S.C. § 548, 12 U.S.C.A. § 548 (West 1969), until the tax exemption for national banks was repealed in 1969.

[9] *E.g.*, 12 U.S.C. §§ 1433 (Federal Home Loan Banks) and 1825 (Federal Deposit Insurance Corp.), both enacted in the 1930's, and 12 U.S.C. § 3019(a) (National Consumer Cooperative Bank, established in 1978).

distribution tax on real estate has been at issue. The plain language of section 2055, however, does not admit of construction. It provides, in perfectly straightforward terms, that the Bank is exempt from state taxes except nondiscriminatory value-based taxes on real estate.

[1] The state commends to us the statement in *Swords v. Nutt*, 11 F.2d 936 (9th Cir. 1926) on which the tax court relied: "[T]he sole purpose of section 5219 [that section of the National Banking Act upon which section 2055 was patterned] is to protect the real property of national banks against unequal assessments or assessments that shall discriminate against the same." The *Swords* case, which held that the real estate of a national bank was not exempt from a nondiscriminatory special assessment because it was a payment for improvements directly benefitting the land and not a tax, is inapposite.[10] There is no doubt that the obligation imposed by § 272.13, subd. 2a, is a tax. Furthermore, to limit the tax immunity provided by § 2055 to *discriminatory* real estate taxes, whether or not value-based, would require us to ignore the phrase "according to its value" or treat it as meaningless. But every word and phrase of the statute should be given meaning if possible. *E.g., Gale v. Commissioner of Taxation*, 228 Minn. 345, 37 N.W.2d 711 (1949).[11]

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[10] There is also considerable doubt about the vitality of the holding in *Swords*. *E.g., U.S. v. City of Adair*, 539 F.2d 1185 (8th Cir. 1976) (Community Credit Corporation declared immune from special assessment because Congress had not expressly waived immunity from special assessment, which was in essence a tax).

[11] The absence of the phrase "according to its value" in the tax exemption statutes of three other federal instrumentalities is a further indication that ignoring its presence in § 2055 is inappropriate. 12 U.S.C. §§ 1768 (credit unions), 2098 (production credit associations), 2134 (banks for cooperatives), all include a waiver of immunity from taxation of tangible personal, as well as real, property "to the same extent as similar property is taxed."

[2-4] The requirement that the tax be related to value limits the tax which a state may levy on the Bank's real estate to an ad valorem (literally "according to value") tax, for which real estate is assessed and the tax rate is applied on the same basis to the assessed value of all real estate similarly situated in the taxing district. *Cf. Miners National Bank of Butte v. Silver Bow County*, 116 Mont. 31, 148 P.2d 538 (1944); *Land Title Bank & Trust Co. v. Ward*, 20 F.Supp. 810 (E.D. Pa. 1937) (interpreting without discussion, but in a different context, the waiver of immunity formerly applicable to national banks). It is clear to us that the tax imposed by § 273.13, subd. 2a, on severed mineral interests is not an ad valorem tax. It is a flat tax of $.25 per acre or $2.00 per interest. The state contends that it is simply a "minimum" tax within the ad valorem system. But the tax never varies according to the location or quality of the mineral interest; by its own terms it is inapplicable to mineral interests whose value has been determined. The very reason for the flat tax is that very few such interests will ever be assessed. Minn. Stat. § 272.039 (1982). An ad valorem tax, on the other hand, even if it contained some provision for a minimum tax, would vary to some extent from interest to interest because, as the tax court found, "the value of an interest in one part of the state may vary from that in another." Since the severed mineral interest tax pursuant to § 273.13, subd. 2a, is unrelated to value, section 2055 precludes its imposition on the Bank's interests.[12]

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[12] *See State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898) (one-cent-per-ton tax on iron ore held unconstitutional under former uniformity clause of Minnesota Constitution). In *Contos*, in which we upheld the tax on severed mineral interests, we distinguished *Lakeside Land Co.*, noting that since 1906 the uniformity clause has not required taxes to be related to value. *Contos* implied, however, that if a relation to value were required, the tax would have been impermissible.

[5] Our conclusion is reinforced by the standard applicable in the interpretation of statutes protective of federal instrumentalities. A federal instrumentality is immune from all state taxes, whether or not discriminatory,[13] unless the state can show that Congress clearly and expressly has waived the immunity. *E.g., First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339, 88 S.Ct. 2173, 20 L.Ed.2d 1138 (1968) (immunity from a state sales and use tax on personal property was not waived clearly in the national bank statute, so the bank was immune); *Federal Reserve Bank of St. Louis v. Metrocentre Improvement Dis-*

[13] It is not clear how this presumed immunity came about. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 4 L.Ed. 579 (1819) held that a federal instrumentality is constitutionally immune from *discriminatory* taxes because "the power to tax is the power to destroy," and a state should not have such power over an arm of the federal government. *Id.* 17 U.S. (4 Wheat.) at 427-428. Only after Congress had passed statutes immunizing instrumentalities from state taxes did the United States Supreme Court extend the constitutional immunity to nondiscriminatory state taxes in order to justify a statutory presumption of immunity. *Austin v. The Alderman*, 74 U.S. (7 Wall.) 694, 19 L.Ed. 224 (1868). The constitutional immunity and the attendant presumption against the state do not appear to be necessary where the tax is nondiscriminatory, i.e., that the state legislature has imposed the tax on its own constituents as well as the federal instrumentality. *See, First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339, 348, 88 S.Ct. 2173, 2178, 20 L.Ed.2d 1138 (1968) (Marshall, J. dissenting); J. Ely, *Democracy and Distrust* 85-86 (1980). We also note that the presumption against nondiscriminatory state taxation should be less strong when the tax is on land, over which the states exercise a peculiar sovereignty. *See McCulloch*, 17 U.S. (4 Wheat.) at 436, in which Justice Marshall stated, "This opinion does not deprive the states of any resources *which they originally possessed.* It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state, * * *." (Emphasis added).

trict # 1, 657 F.2d 183, 186 (8th Cir. 1981) (a special assessment was not a real estate "tax"; therefore, Congress has not waived immunity); *Reconstruction Finance Corporation v. Texas*, 229 F.2d 9 (5th Cir. 1956) (immunity was not waived as to penalties and interest on real estate taxes); *U.S. v. County of San Diego*, 249 F.Supp. 321 (S.D. Cal. 1966) (Federal Housing Authority was immune from tax on personal property used in the operation of real property). Although the state contends that the Bank is a privately owned corporate entity which holds its severed mineral interests for the benefit of its shareholders and, hence, must demonstrate its entitlement to tax exemption, it was held in *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 102, 62 S.Ct. 1, 5, 86 L.Ed. 65 (1941), that the acquisition of real estate through foreclosure is part of the general lending function of the Bank and is covered by the immunity provided by 12 U.S.C. § 2055. Inasmuch as there has been a showing of a clear and express waiver, the Bank's severed mineral interests are immune from the tax imposed by Minn. Stat. § 273.13, subd. 2a (1982).

Since we conclude that 12 U.S.C. § 2055 precludes application of the severed mineral interest tax to the Bank, we do not reach the issue of the constitutionality of the tax.

Reversed.

YETKA, Justice (dissenting).

I dissent. I believe the minimum tax per acre is an ad valorem tax. I see no necessity that an ad valorem tax be a perfect tax—one based exactly according to market value. It would be difficult for the state to measure the value of minerals on each parcel without drilling and testing. Therefore, it sets a minimum tax per acre on those reserving such minerals. Presumably, in reserving minerals, the owner is recognizing some value. When the tax is not discriminatory

and is for such a modest amount, I believe it is reasonable to read section 2055 as permitting the state to collect the tax.

STATE OF MINNESOTA
Office of The Clerk Of the Appellate Courts
State Capitol, St. Paul

Date: November 16, 1983

In the Matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minn. Stat. § 273.13, Subdivision 2a, and Remaining Delinquent on the First Monday in January, 1977, 1978, and 1979, for the County of St. Louis, State of Minnesota.

COUNTY OF ST. LOUIS,

Respondent,

and

MINNESOTA CHIPPEWA TRIBE,

Respondent,

C3-82-630, C4-82-846

vs.

THE FEDERAL LAND BANK OF ST. PAUL,

Relator (C3-82-630),

Appellant (C4-82-846).

Please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

IT IS FURTHER ORDERED, that no attorney's fees are allowed pursuant to Rule 140, Rules of Civil Appellate Procedure.

Respectfully,
WAYNE TSCHIMPERLE
Clerk of the Appellate Courts

STATE OF MINNESOTA
St. Louis County

TAX COURT
Regular Division

Court File Nos. 141137, 142627½, 144338

In the Matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minn. Stat. § 273.13, Subdivision 2a, and Remaining Delinquent on the first Monday in January, 1977, 1978, and 1979, for the County of St. Louis, State of Minnesota.

COUNTY OF ST. LOUIS,

Petitioner,

and

MINNESOTA CHIPPEWA TRIBE,

Intervenor,

-vs-

THE FEDERAL LAND BANK OF SAINT PAUL,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above entitled matters came on for hearing before the Minnesota Tax Court, Judge Earl B. Gustafson presiding, on September 1, 1981. Testimony was concluded September 10th and the case was submitted on post-trial briefs on January 19, 1982.

Philip J. Olfelt, Assistant Attorney General, C. Paul Faraci, Deputy Attorney General, and Michael Dean, Assistant St. Louis County Attorney, appeared for Petitioner, County of St. Louis; John W. Windhorst, Jr. and William J. Hempel of Dorsey, Windhorst, Hannaford, Whitney & Halladay, appeared for Defendant, Federal Land Bank of St. Paul. Kent

P. Tupper of Tupper, Smith and Mattson, appeared for Intervenor, Minnesota Chippewa Tribe.

The Court, having heard the testimony and considered the evidence, briefs and arguments of counsel and upon all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. The overriding issue in this case is whether Defendant, The Federal Land Bank of Saint Paul, is subject to the tax on severed mineral interests imposed under Minn. Stat. 273.13, Subd. 2(a), with respect to taxes payable in 1976 and subsequent years.

2. The Bank is a federally chartered, privately owned, financial institution authorized to make long-term real estate mortgage loans to farmers, ranchers, growers and rural residents located in the Seventh Farm Credit District (comprising the states of Michigan, Minnesota, North Dakota and Wisconsin).

3. The Bank has claimed exemption from taxation under 12 U.S.C. § 2055 and has also claimed Minn. Stat. 273.13, Subd. 2(a) is unconstitutional on a number of grounds. This Court in its Orders dated July 23, 1980 and October 31, 1980 ruled against the Bank on all of these issues with one exception.

4. In our Order of October 31, 1980, we reserved any ruling on the Bank's contention that, if it owned mineral rights that had no value, the tax on severed minerals would be invalid as unconstitutional. In ordering any evidentiary hearing this Court neither accepted nor rejected the Bank's argument.

5. The pertinent portion of the Court's memorandum accompanying our Order of October 31, 1980 reads as follows:

The Bank has submitted affidavits by two experts in mineral valuation that conclude that some of the Bank's mineral interests have no value. Assuming this to be true, the Bank argues the tax is unconstitutional. How this would necessarily make the severed mineral tax unconstitutional as a violation of due process or the uniformity and equal protection clauses is not articulated in the memoranda filed by the Bank. It merely maintains that there is a "clear indication in *Contos* that the Supreme Court would invalidate the special tax on severed mineral interests (under the equal protection, uniformity, and due process clauses) if it were established as a matter of fact that some severed mineral interests have no value."

This specific argument was not developed in the original cross-motions for summary judgment and is founded on the assumption that this Court will make a factual finding contrary to the Court in *Contos*, namely, that some mineral interests have no value. We feel the Bank is entitled to develop this argument fully and Petitioner be given an opportunity to respond fully and will therefore hold an evidentiary hearing limited to this issue where there now appears to be a disputed question of fact.

6. The tax being contested subjects severed minerals, not otherwise taxed, to a tax of 25 cents per acre per year or a minimum tax of $2.00 per interest per year. Minn. Stat. 272.04, Subd. 1; 273.13, Subd. 2(a).

7. Under Minn. Stat. 272.04 mineral interests assessed and taxed separately from the surface rights "may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes."

8. There is no statutory provision that the owner of a severed mineral interest is personally liable for the payment of the tax.

9. The Bank owns mineral interests in approximately 484,000 acres in 85 out of Minnesota's 87 counties as a result of mineral reservations it made in deeds of conveyance.

10. The Bank has historically acquired property when borrowers defaulted on their mortgage loans.

11. After acquiring real property thorough (sic) foreclosures, or deeds given in lieu of foreclosure, the Bank would sell the properties reserving 100 percent or 50 percent of the mineral interests, some for a period of years and some in perpetuity.

12. These mineral interests were retained by the Bank, according to its Director of Mineral Operations, "with the hope of ultimately recovering all or a part of these losses (on defaulted loans) through eventual mineral development."

13. The present policy of the Bank is never to sell its severed mineral interests except in situations where refusal would work undue hardship or release would be to the Bank's advantage, and then only for valuable consideration.

14. Since 1973 the Bank has received a low of $100 for 632 acres in Clay County ($.15 per acre), to a high of $100 for two acres in Kandiyohi County ($50 per acre) for selling or releasing mineral rights.

15. Since March 1975 the Bank has had a policy of never selling severed mineral interests for less than $1.25 per acre.

16. The Director of Minerals for the Bank, with respect to the entire four-state area, received 19 written requests for releases (conveyances) of mineral rights during 1980 and 29 written requests during the first eight months of 1981. He also received some oral requests. Only one request was granted.

17. Every mineral interest has some value as a property right regardless of its location, although the value of an interest in one part of the state may vary from that in another.

18. The attached Memorandum is made a part hereof.

CONCLUSIONS OF LAW

1. The finding of this Court that every mineral interest has some value brings this case within the holding of *Contos v. Herbst*, 278 N.W. 2d 732 (Minn. 1979).

2. The mineral interests involved in this proceeding are fully subject to tax under Minn. Stat. 273.13, Subd. 2(a).

3. The Defendant, Federal Land Bank of St. Paul, shall pay taxes due and payable together with interest and penalties or the property will forfeit to the State of Minnesota for nonpayment according to law.

4. Petitioner, County of St. Louis, is awarded its costs and disbursements incurred herein.

LET JUDGMENT BE ENTERED ACCORDINGLY. A 15 DAY STAY IS HEREBY ORDERED.

By the Court
EARL B. GUSTAFSON, JUDGE
Minnesota Tax Court

Dated: This 19th day of March, 1982.

MEMORANDUM

This decision deals with two limited issues. First, are any of the Federal Land Bank's mineral interests without value? Second, if some mineral interests have no value does it follow that the tax on severed minerals imposed by Minn. Stat. 273.13, Subd. 2(a) is unconstitutional?

After considering all the evidence adduced at the hearing held in September 1981 and allowing the Bank full opportunity to present all arguments, I have reached the conclusion that

all mineral interests have some value and, further, that the Bank would have suffered no injury if some of its mineral rights were conclusively without value because payment of the tax is optional.

The evidence presented by the Federal Land Bank tended to prove that mineral interests severed from the surface ownership vary greatly in value depending upon the type of minerals that geologists reasonably anticipate are beneath the surface and the cost of extracting these minerals. If the cost of extraction exceeds the present or anticipated market price that can be obtained, the mineral rights, according to the Bank, have only minimal or speculative value. In some situations the minerals are beneath such a deep overburden that no mining could be anticipated within the foreseeable future. In other areas of the state, no minerals of any *present* commercial value have been found.

None of the evidence offered by the Bank has convinced this Court that mineral rights have no value. We do not read into the finding of the District Court in *Contos* (affirmed by the Supreme Court) that every mineral interest must have some measurable present market value and that speculative and minimal values are excluded from taxation. All mineral interests have some speculative and uncertain values until ore is actually extracted and sold. Even then, future changes in technology and markets may turn an "exhausted and worthless" mine into valuable property, once again.

Aside from the expert geologic evidence presented at trial, there remains the undisputed fact that the Bank itself treats these mineral rights as having value,—speculative and uncertain, perhaps—but, nevertheless having value. It severed and retained these mineral rights with the expressed hope of earning money, "through eventual mineral development."

As the Montan (sic) Supreme Court concluded in *Northern Pacific Ry. Co. v. Mjelde*, 48 Mont. 287, 304, 137 P. 386, 391 (Mont. 1913).

> It will not do to say that, because neither of these reservations produces revenue, it is not of any value. *From the very act of making the reservation, the presumption arises that each interest has some appreciable value, or the reservation would not have been made.* Taxation is the rule, exemption is the exception. . . . (Emphasis added.)

Similarly, in *Union Pacific R. Co. v. Hanna*, 73 Colo. 162, 171, 214 P. 550, 554 (Colo. 1923), the Colorado Supreme Court ruled:

> The mere fact that the plaintiff reserved these [severed mineral] rights, when conveying the lands to purchasers and continues to hold them, with the right, at anytime, to begin to exercise them, is some evidence that the reservations are valuable.

Because of the "potential income and asset value of the Bank's mineral interests," the express policy of the Bank since 1976 precludes the release (sale) of any of its mineral rights except when refusal would work an undue hardship or when it would be to the Bank's advantage.

A detailed review of the evidence leads to but one conclusion. All mineral rights have some value. This value, in the opinion of one owner, may not justify the continued payment of an annual tax of 25 cents per acre. That is a choice that each owner must make. Forcing this choice does not make the tax unconstitutional.

In *Texaco, Inc. v. Short*, 454 U.S. ——, 70 L. Ed. 2d 738, 102 S. Ct. 781, decided January 12, 1982, the United States Supreme Court upheld an Indiana version of a severed min-

erals statute that goes farther than Minnesota's statute. The Indiana statute provides for automatic lapse and reversion to the surface owner of the severed mineral interests if there is no mining or exploratory use for 20 years. Writing for the majority, Justice Stevens said that, just as a state may create and protect a property interest, it may also condition permanent retention of that property on the performance of reasonable conditions. (Four Justices dissented.)

The question of the Bank's standing to raise this constitutional challenge should not be ignored. This could be considered the threshold issue and will be discussed to finally lay to rest this and any further litigation. The Bank, as discussed above, maintains that if it can prove some of its mineral interests have no value, then, it has been denied due process by being forced to pay taxes on worthless property. This is incorrect. The tax is not enforceable as a personal judgment and need not be paid. If the bank wishes to retain these mineral rights, of course, it must pay the annual 25 cents acreage tax. However, if the mineral rights have no value, the bank may decline to pay the acreage tax and these mineral rights (which hypothetically have no value) will revert to the State of Minnesota as tax delinquent real property.

It is difficult to see how the bank can, on the one hand, argue that certain of its mineral rights have no value and yet argue that it has suffered an injury which requires constitutional protection. If the mineral rights have no value, there is no injury to the bank in merely refusing to pay the tax. The mineral rights that will then be forfeited are valueless and the Bank has obviously suffered no loss.

There is a well-established line of authority that no litigant can question the constitutionality of a statute unless he can first show that the statute has caused him or is about to cause

him, some injury. The leading United States Supreme Court decision enunciating this rule is *Massachusetts v. Mellon*, 262 U.S. 447, 43 S. Ct. 597 (1923) and this has been followed in Minnesota. *State ex rel. Clinton Falls Nursery Co. v. County of Steele*, 181 Minn. 427, 232 N.W. 737 (1930); *State ex rel. Smith v. Haveland*, 223 Minn. 89, 25 N.W. 2d 474 (1946); *Lee v. Delmont*, 228 Minn. 101, 36 N.W. 2d 530 (1949); *State v. Meyer*, 228 Minn. 286, 37 N.W. 2d 3 (1949); *Beatty v. Winona Housing and Redevelopment Authority*, 277 Minn. 76, 151 N.W. 2d 584 (1967).

In *St. Paul Chamber of Commerce v. Marzitelli*, 258 N.W. 2d 585 (Minn. 1977) the Court said:

> When a constitutionality of a statute is challenged, the litigant bringing the challenge must, in order to invoke the jurisdiction of the court, be able to show that the statute is, or is about to be, applied to his disadvantage. 258 N.W. 2d 585, 588.

For the several reasons stated the Bank should pay the contested tax or the property should be forfeited.

E.B.G.

STATE OF MINNESOTA — TAX COURT
St. Louis County — Regular Division

File Nos. 141137, 142627½, 144338

In the Matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minn. Stat. 273.13, Subdivision 2a, and Remaining Delinquent on the first Monday in January, 1977, 1978 and 1979, for the County of St. Louis, State of Minnesota.

COUNTY OF ST. LOUIS,

Petitioner,

-vs-

THE FEDERAL LAND BANK OF ST. PAUL,

Defendant,

and

MINNESOTA CHIPPEWA TRIBE,

Intervenor.

ORDER

The above entitled matters came on for hearing before the Minnesota Tax Court, Judge Earl B. Gustafson presiding, on the 11th day of September, 1980 at the Tax Court, St. Paul, Minnesota, on Defendant's Petition for Re-Hearing and Amended Order for Summary Judgment.

Philip J. Olfelt, Assistant Attorney General, and Michael Dean, Assistant St. Louis County Attorney, appeared for Petitioner, County of St. Louis; John W. Windhorst, Jr. and Bruce J. Shnider appeared for Defendant, Federal Land Bank of St. Paul.

The Court, having heard and considered the briefs and oral arguments of counsel and upon all of the files, records and proceedings herein DOES HEREBY ORDER that an evidentiary hearing be held on the fact issue of whether some of Defendant's mineral interests are without any value. All other requests that the severed minerals tax be held unconstitutional are denied.

The attached Memorandum is made a part of this order.

Dated: October 31, 1980.

MINNESOTA TAX COURT
EARL B. GUSTAFSON
Judge

MEMORANDUM

The Defendant, The Federal Land Bank of St. Paul, has moved the Court to amend its Order For Summary Judgment herein dated July 23, 1980 and grant summary judgment to the Bank or, in the alternative, set the matter for trial on the issue of whether or not some of the Bank's severed mineral interest have no value.

In granting summary judgment for the Petitioner, County of St. Louis, we considered all of the arguments raised by Defendant in its 49 page Memorandum. We discussed the principal arguments at some length and concluded, "We find no other reason to consider this tax unconstitutional or unenforceable against the Bank."

In support of this present Petition for Rehearing the Bank requests that we reconsider three constitutional arguments not discussed in detail in our Memorandum of July 23, 1980.

The first constitutional issue raised by this Petition for Rehearing is the Bank's contention that the severed minerals tax violates the equal protection and the uniformity clauses because there is no rational basis for taxing severed mineral interests by a different method from that used to tax unsevered mineral interests. As the Bank correctly points out, severed mineral interests, as a result of the registration portion of this 1973 law, can now be more readily identified and can therefore, to that extent, be more readily valued and assessed. The Bank further points out that unsevered minerals are necessarily included in the entire bundle of property rights comprising the fee simple interest which is valued and taxed under the ad valorem real estate tax system. When minerals in the future are severed from the fee the assessor is now in a position to value the mineral interest separately and deduct this figure from the estimated market value of

the entire fee interest. The Bank argues therefore, that from and after the time registration of severed minerals became mandatory no justification exists for placing severed mineral interests in a separate class and subjecting them to an acreage tax.

We can agree with only a portion of this argument and disagree entirely with the conclusion. The registration of severed minerals interests now undoubtedly assists in their identification but the expensive, speculative and burdensome administrative problems of valuation remain. These practical difficulties were considered by the Minnesota Supreme Court in *Contos* when it upheld the constitutionality of the tax as a reasonable classification.

> In sum the evidence supports the legislature's finding that a class of valuable property interests were escaping taxation because of the practicable difficulties in identifying, valuing, and assessing those interests within more traditional tax schemes. In light of this evidence we cannot say that the practical considerations which prompted the legislature to classify separately severed mineral interests and to impose a tax of $.25 per acre per year or $2.00 per year, whichever is greater, were unreasonable.
>
> That practical considerations can serve as the basis for the classification and taxation of property was established long ago in Mutual Benfit (sic) Ins. Co. v. County of Martin, 104 Minn. 179, 116 N.W. 572 (1908).
>
> *Contos v. Herbst*, 278 N.W. 2d 732, 738.

There is, of course, a presumption favoring the constitutionality of this statute. The Bank in this case has "the burden to show beyond a reasonable doubt that the act conflicts with the uniformity clause of the state constitution." *Contos v. Herbst*, 278 N.W. 2d 732, 736; *Elwell v. County of Henne-*

pin, 221 N.W. 2d 538; *McCannel v. County of Hennepin*, —— N.W. 2d —— (1980); *Guilliams v. Commissioner of Revenue*, —— N.W. 2d —— (1980). In the field of taxation, the legislature's power is inherently broader and its exercise more flexible than in other areas. *Reed v. Bjornson*, 253 N.W. 102 (1934); *McCannel v. County of Hennepin*, —— N.W. 2d —— (1980); *Guilliams v. Commissioner of Revenue*, —— N.W. 2d —— (1980).

We do not find this statute to be either clearly arbitrary nor without a reasonable basis. We, therefore, have no choice but to consider it constitutional.

The second constitutional argument is one claiming unequal protection of the laws based on unequal or selective enforcement of the severed mineral tax. In 29 counties out of the 85 where the Bank owns mineral interests, it apparently has never been required to pay this tax. We consider this constitutional argument, coming from the Bank, as being raised by a party without standing. There is no claim of discrimination that in anyway injures the Bank. It temporarily, at least, is benefitting from unequal enforcement. If and when this issue is raised by some other party claiming and showing actual discrimination, we will give it due consideration after all parties involved have an opportunity to present their evidence. The most likely answer to this present situation is that some counties are uncertain about how to proceed in taxing the Bank's mineral interests while this litigation is pending and once there is a final court determination, uniform enforcement will follow.

The third constitutional argument involves the question of whether some of the Bank's mineral interests have no value. This factual issue was considered in the *Contos* case but, of course, the Bank was not a party to that proceeding so it is

not res judicata. In *Contos* the trial court found that every mineral interest in Minnesota has some value as a property interest regardless of its location although the value of mineral interests may vary substantially from one part of the state to another. This finding by the trial court was sustained by the Supreme Court. The Bank has submitted affidavits by two experts in mineral valuation that conclude that some of the Bank's mineral interests have no value. Assuming this to be true, the Bank argues the tax is unconstitutional. How this would necessarily make the severed mineral tax unconstitutional as a violation of due process or the uniformity and equal protection clauses is not articulated in the memoranda filed by the Bank. It merely maintains that there is a "clear indication in *Contos* that the Supreme Court would invalidate the special tax on severed mineral interests (under the equal protection, uniformity, and due process clauses) if it were established as a matter of fact that some severed mineral interests have no value."

This specific argument was not developed in the original cross-motions for summary judgment and is founded on the assumption that this Court will make a factual finding contrary to the Court in *Contos*, namely, that some mineral interests have no value. We feel the Bank is entitled to develop this argument fully and Petitioner be given an opportunity to respond fully and will therefore hold an evidentiary hearing limited to this issue where there now appears to be a disputed question of fact.

Finally, the Petition for Rehearing requests the Court to reconsider and change its decision on the fundamental issue of statutory construction of 12 U.S.C. Sec. 2055. After considering the additional written and oral arguments of all counsel, we find no reason or basis for changing our original decision on this issue.

E.B.G.

STATE OF MINNESOTA
TAX COURT

In the Matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minn. Stat. 273.13, Subdivision 2a, and Remaining Delinquent on the first Monday in January, 1977, 1978 and 1979, for the County of St. Louis, State of Minnesota.

File Nos. 141137, 142627½, 144338

COUNTY OF ST. LOUIS,

Petitioner,

vs.

THE FEDERAL LAND BANK OF ST. PAUL,

Defendant,

and

MINNESOTA CHIPPEWA TRIBE,

Intervenor.

ORDER FOR SUMMARY JUDGMENT

The above entitled matters came on for hearing before the Minnesota Tax Court, Judge Earl B. Gustafson presiding, on the 16th day of May, 1980 at the St. Louis County Courthouse, Duluth, Minnesota, on cross-motions for summary judgment.

Philip J. Olfelt, Assistant Attorney General, C. Paul Faraci, Deputy Attorney General, and Michael Dean, Assistant St. Louis County Attorney, appeared for petitioner, County of St. Louis; John W. Windhorst, Jr. and Bruce J. Shnider appeared for defendant, Federal Land Bank of St. Paul; Mr. Kent Tupper appeared for intervenor, Minnesota Chippewa Tribe.

The Court, having heard and considered the briefs and oral arguments of counsel and upon all of the files, records and proceedings herein DOES HEREBY ORDER summary judgment for petitioner, St. Louis County and against Federal Land Bank of St. Paul.

The attached Memorandum is made a part of this order.

Minnesota Tax Court
EARL B. GUSTAFSON, Judge

Dated: July 23, 1980.

MEMORANDUM

The material facts are not in dispute. The Federal Land Bank of St. Paul is exempt from all taxes with but one exception. It is obligated to pay taxes on real estate "to the same extent, according to its value, as other similar property held by other persons is taxed." 12 U.S.C. § 2055. The tax being contested is Minnesota's "severed mineral tax" enacted in 1973, (Chapt. 650, Laws 1973) and now coded as Minn. Stat. Sections 272.039; 272.04, Subd. 1; and 273.14, Subd. 2a. This is considered a tax on real property and was held constitutional by the Minnesota Supreme Court in *Contos, et al v. Robert L. Herbst, et al, Andrew Korda, St. Louis County Auditor, and the Minnesota Chippewa Tribe,* —— Minn. ——, 278 N.W. 2d 732, Jan. 26, 1979, rehearing denied March 13, 1979, Appeal dismissed Oct. 30, 1979, 100 S. Ct. 24.

The Federal Land Bank claims it does not have to pay the "severed minerals" tax because it is not an ad valorem tax.

We are ordering summary judgment for petitioner County of St. Louis and against the Federal Land Bank because—there being no genuine issue as to any material fact—petitioner is entitled to judgment as a matter of law.

The Federal Land Bank owns "severed" mineral rights in 85 of the 87 counties in Minnesota as a result of mineral reservations it made in deeds of conveyance. The Bank makes loans to farmers and rural residents and over the years has acquired property through foreclosures (or deeds in lieu of foreclosure) when borrowers defaulted on their mortgage loans. After acquiring real estate in this fashion, the Bank would turn around and sell the property to recover its loan. As a matter of custom it would reserve (sever) 100% or 50% of the mineral interest—some for 25 years and some in perpetuity. The Bank now owns mineral interests in approximately 500,000 acres throughout Minnesota on which it pays approximately $60,000 in taxes annually.

Prior to 1973 mineral interests that were owned separately from the fee ownership escaped taxation unless the property was actually being mined or was specifically valued through core drilling or other analysis. When it enacted a minimum annual tax of 25¢ per acre on minerals owned separately from the surface interests, the legislature made specific Findings and Conclusions that read in part as follows:

> M.S. 272.039 LEGISLATIVE FINDINGS AND CONCLUSIONS RELATED TO THE TAXATION OF MINERALS OWNED SEPARATELY FROM THE SURFACE. The legislature finds, for the reasons stated below, that a class of real property has been created which, although not exempt from taxation, is not assessed for tax purposes and does not, therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of Washburn v. Gregory, 1914, 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where

mineral interests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land, separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) Since this 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis; and (3) The absence of any taxation of mineral interests owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and mineral estates and resulted in the creation of hundreds of thousands of acres of untaxed mineral estate lands which thus are immune from tax forfeiture. . . .

On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 272.13, subdivision 2a is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years.

It is, therefore, clear that the 25¢ per acre tax ($2 minimum) on mineral interests owned separately and apart from the fee title is a tax on real estate and was a legislative response to the historical phenomena that allowed these real property interests to effectively escape taxation. All claims that the tax was an unconstitutional denial of equal protection

or uniformity were fully considered and denied by the District Court and, on appeal, by the Minnesota Supreme Court. *Contos v. Herbst*, 278 N.W. 2d 732.

Although mineral rights all have some value these values vary substantially. *Contos v. Herbst*, 278 N.W. 2d at 738. Most severed mineral interests cannot be assessed for ad valorem property tax purposes because (1) the value can only be determined by prohibitively expensive exploration; and (2) data available on sales and exchanges of mineral interests is very limited. *Contos v. Herbst*, 278 N.W. 2d at 738. As the Minnesota Supreme Court found:

> In sum the evidence supports the legislature's findings that a class of valuable property interests were escaping taxation because of the practicable difficulties in indentifying, (sic) valuing, and assessing those interests within more traditional tax schemes. In light of this evidence we cannot say that the practical considerations which prompted the legislature to classify separately severed mineral interests and to impose a tax of $.25 per acre per year or $2.00 per year, whichever is greater, were unreasonable. *Contos v. Herbst*, 278 N.W. 2d at 738.

In the instant case the Bank makes no claim that it is receiving unequal treatment when compared to other owners of "severed" mineral interests. The claim it makes is one of tax exemption. Simply put, the Bank maintains that it is required to pay only ad valorem real estate taxes or taxes based upon the value of its property and that this is a real estate tax based on acreage, not on value. The language in the federal law that grants the Bank tax exemption from everything but real estate taxes is the basis for this argument and reads as follows:

> 12 U.S.C. § 2055. TAXATION. Every Federal land bank and every Federal land bank association and the

> capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, *except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed.* (Emphasis added)

This statutory language has remained essentially the same since 1916, through several reenactments. No reported cases have interpreted this provision. It, therefore, becomes a question of statutory interpretation which, in turn, is an attempt to determine the congressional intent when this statute was originally passed.

The Bank points to the words "according to its value", and argues that Congress must have meant that Federal land banks are obligated to pay ad valorem real estate taxes only. This construction focuses on the parenthetical phrase, "according to its value" to the exclusion of the operative language, "to the same extent as other similar property held by other persons is taxed".

It must be remembered that the burden is clearly upon the taxpayer to prove exemption from taxation because all property is presumed taxable unless specifically exempt by law, Minn. Stat. 272.01, Subd. 1. Exemptions from taxation are strictly construed and to be granted only when some public purpose is being served and not merely for the benefit of any particular persons or organizations at the expense of taxpayers generally. *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 554, 38 N.W. 2d 803, 808 (1949); *Camping and Education Foundation v. State*, 282 Minn. 245, 164 N.W. 2d 369 (1969); *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 22 N.W. 2d 642 (1946).

This is a claim for tax exemption. The Bank seeks to be treated differently from other taxpayers in the same class. The United States Supreme Court long ago said language granting tax immunity must be unequivocal. "It is the settled doctrine of this Court that an immunity from taxation by the state will not be recognized unless granted in terms too plain to be mistaken." *Chicago, Burlington & Kansas City Railroad v. Missouri ex rel,* Guffey, 7 S. Ct. 693, 696, 120 U.S. 569, 575 (1887). Although this is an immunity claimed under federal rather than state law, the requirement that any tax exemption should be expressed in clear and unmistakable language obtains.

Congress could not have had this 1973 Minnesota law in mind when it first enacted this requirement in 1916. It is more logical to assume it wanted the banks to pay all non-discriminatory real estate taxes on the same basis as other taxpayers even though it might not be calculated strictly on its market value, particularly where that value could not be determined without prohibitive cost.

The federal circuit court in the case of *Sword v. Nutt,* 11 F. 2d 936 (9th Cir. 1926) dealt with a contested assessment for public improvements which the taxpayer argued was a tax that should be voided because it was not based on value. The court discussed nearly identical language contained in the federal law regulating National Banks which provided:

> Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed. Revised Statutes, § 5219.

The thrust of this decision is one we agree with—that a national bank owning real estate should be treated equally with other property owners.

> . . . But it is clear that the sole purpose of section 5219 is to protect the real property of national banks against unequal assessments or assessments that shall discriminate against the same. *Sword v. Nutt*, 11 F. 2d at 936 . . . .
>
> Nothing is found in the national legislation on the subject to justify the conclusion that Congress, in granting to national banks authority to own real estate, intended to absolve such property from the burdens imposed by state authority upon like lands within its domain. *Sword v. Nutt*, 11 F. 2d at 937.

The *Sword v. Nutt*, Supra case was ultimately decided on the ground that the assessment was not a tax. Nevertheless, the court's view of congressional intent is consistent with our decision in this case.

We think the language of Sec. 2055 read in its entirety indicates a congressional intent to have Federal land banks pay all local real estate taxes on the same basis and to the same extent that other owners are taxed. They should not be singled out to pay on a value higher than similarly situated taxpayers nor should they be exempt from taxes paid by similarly situated taxpayers based on acreage where value is not susceptible of accurate determination. A contrary decision would give Federal land banks a special immunity from nondiscriminatory real estate taxes and, in our opinion, would be a result not compelled nor contemplated by Sec. 2055.

A second defense raised by the Bank is that the tax on severed mineral interests is invalid under the equal protection clause of the federal constitution and the uniformity clause of the Minnesota constitution because the taxation of all

severed mineral interests at a uniform rate, despite substantial disparities in value, is arbitrary and capricious. Identical arguments were made in the *Contos* case and the trial court (Hon. Harold W. Schultz) made the following Conclusions of Law:

> 3. The classification and treatment for tax purposes, of severed mineral interests separately and apart from unsevered mineral interests as well as all other interests in real property violate neither the equal protection provisions of the State and Federal Constitutions (Minn. Const. Art. 1, § 2; U.S. Const. Amend. XIV, § 1) nor the State constitutional provision against special legislation (Minn. Const. Art. 12, § 1).
>
> 4. The taxation of severed mineral interests in the manner and at the rates provided by Minnesota Statutes, Section 273.13, Subdivision 2a (1974) violates neither the uniformity clause of the State Constitution (Minn. Const. Art. 10, § 1), nor the equal protection or due process clause of the Federal Constitution (U.S. Const. Amend. XIV, § 1)." (Exhibit A, Conclusions 3 and 4)

The Minnesota Supreme Court affirmed the judgment of the district court "in all respects". *Contos v. Herbst*, 278 N.W. at 736. We consider that decision binding on this court.

We find no other reason to consider this tax unconstitutional or unenforceable against the Bank and therefore are granting St. Louis County's Motion for summary judgment which, of course, has the effect of denying the Bank's motion for summary judgment.

EARL B. GUSTAFSON
Judge

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115 Third Street Southwest
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April 29, 1977

Clerk of District Court
St. Louis County Courthouse
Duluth, Minnesota

Re: The Federal Land Bank of Saint Paul—
Answer in 1977 Tax Delinquency Proceedings

Dear Sir:

We enclose for filing pursuant to Minnesota Statutes, Section 279.15, an Answer of The Federal Land Bank of Saint Paul in tax delinquency proceedings and our check in the amount of $10.00 in payment of the filing fee for the Answer.

The tax involved in this case is the tax on severed mineral interests imposed by Minnesota Statutes, Section 273.13, Subdivision 2a. One of the defenses raised in the Answer is that this tax is unconstitutional on several grounds. The same issue is now pending before the Minnesota Supreme Court in *Contos v. Herbst*, Supreme Court File No. 47346. We request that

the present Answer *not* be placed upon the trial calendar until a final decision has been rendered in the *Contos* case in order to avoid unnecessary duplication of effort and expense. If there should be any difficulty in granting this request, I would appreciate your contacting me.

Very truly yours,
JOHN W. WINDHORST, JR.

JWWJr:dn
Enclosures

STATE OF MINNESOTA — DISTRICT COURT
County of St. Louis — Sixth Judicial District

In the matter of the Proceedings to Enforce Payment of the Tax on Mineral Interests Assessed Pursuant to Minnesota Statutes, Section 273.13, Subdivision 2a, and Remaining Delinquent on the first Monday in January, 1977, for the County of St. Louis, State of Minnesota.

141137
(Petition)

ANSWER OF THE FEDERAL LAND BANK OF SAINT PAUL

1. Defendant has an estate, right, title, or interest in certain "mineral interests," within the meaning of Minnesota Statutes, Section 273.13, Subdivision 2a, which are situated in the County of St. Louis, State of Minnesota, and are described in Exhibit A attached hereto.

2. The duly constituted local and county officials have levied and assessed a tax upon said mineral interests in 1975, for payment in 1976, pursuant to Minnesota Statutes, Section 273.13, Subdivision 2a.

3. Defendant did not pay the tax described in Paragraph 2, and permitted it to become delinquent. The mineral interests, and the taxes in respect thereto, were thereupon included in the delinquency list filed with the clerk of district court pursuant to Minnesota Statutes, Section 279.05, and published by the county auditor in Chisholm Free Press on April 14, 1977 and April 21, 1977, pursuant to Minnesota Statutes, Section 279.09.

4. The mineral interests described in Paragraph 1 are exempt from the tax imposed pursuant to Minnesota Statutes, Section 273.13, Subdivision 2a, and because (a) said tax violates the uniformity clause of Article X, Section 1 of the Minnesota Constitution, the equal protection clause of the Fourteenth Amendment to the United States Constitution, the prohibition upon class or special legislation contained in Article I, Section 2 and Article XII, Section 1 of the Minnesota Constitution and the Fourteenth Amendment to the United States Constitution, and the due process clauses contained in Article I, Section 7 of the Minnesota Constitution and the Fourteenth Amendment to the Federal Constitution; and (b) Title 12, Section 2055 of the United States Code exempts federal land banks from said tax because it is not a tax "on real estate . . . [of a federal land bank] to the same extent, according to its value, as other similar property held by other persons is taxed."

5. Accordingly, the levy and assessment upon the mineral interests described in Paragraph 1 of the tax on mineral interests imposed by Minnesota Statutes, Section 273.13, Subdivision 2a, was erroneous.

WHEREFORE, defendant prays that the Court determine that the levy and assessment of the tax in question was erroneous, and that it order judgment discharging the parcels

from such taxes and from all penalty and interest liabilities in respect thereto, allowing defendant its costs and disbursements, and granting such other relief as may be just and proper.

Dated: April 1, 1977.

THE FEDERAL LAND BANK OF SAINT PAUL
By DONALD F. HATHAWAY
Its Assistant Secretary

STATE OF MINNESOTA
COUNTY OF RAMSEY—ss

Donald F. Hathaway, being first duly sworn, says that he is the Assistant Secretary of The Federal Land Bank of Saint Paul, the defendant named in the foregoing Answer; that he has read the Answer and knows the contents thereof; and that the Answer is true to his own knowledge.

DONALD F. HATHAWAY

Subscribed and sworn to before me this 1st day of April, 1977.
Janette L. Oss, Notary Public—Minnesota, Dakota County.
My Commission Expires June 14, 1983.

DORSEY, WINDHORST,
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JOHN W. WINDHORST, JR.
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Attorneys for Defendant

ALLISON CONTOS, et al.,

Appellants,

v.

ROBERT L. HERBST, Individually, and as Commissioner of the Minnesota Department of Natural Resources, et al.,

Respondents,

ANDREW KORDA, Individually, and as Auditor for St. Louis County,

Respondent,

MINNESOTA CHIPPEWA TRIBE,

Respondent.

No. 47346.

Supreme Court of Minnesota.

Jan. 26, 1979.

Rehearing Denied March 13, 1979.

Owners of severed mineral interests brought action seeking declaration that registration, forfeiture and tax provisions of the Mineral Registration Act are unconstitutional and an injunction prohibiting their enforcement. The District Court, Ramsey County, Harold W. Schultz, J., concluded that the registration, taxation, and forfeiture provisions were constitutional but that the procedures attending the forfeiture provisions were unconstitutional, and appeals were taken. The Supreme Court, Kelly, J., held that: (1) Mineral Registration Act, which classifies separate mineral interests for purposes of taxation, does not violate uniformity clause of Minnesota Constitution; (2) uniformity clause did not require that real property taxes be related to value; (3) forfeiture provisions of Act did not violate due process clause of State and Federal Constitutions; (4) procedures attending forfeiture

provisions of Act violate due process clause of State and Federal Constitutions, and (5) language governing registration requirements of Act is not unconstitutionally vague.

Affirmed.

* * * * *

Syllabus by the Court

1. L. 1973, c. 650, art. XX [mineral registration act] which classifies severed mineral interests for purposes of taxation does not violate the uniformity clause of the Minnesota Constitution.

2. The uniformity clause does not require that real property taxes be related to value.

3. The forfeiture provisions of the mineral registration act do not violate the due process clauses of the state and Federal constitutions.

4. The procedures attending the forfeiture provisions of the mineral registration act violate the due process clause of the state and Federal constitutions because the notice provisions are inadequate and because an owner of severed mineral interest who fails to comply with the registration requirement is denied an opportunity for a hearing before the forfeiture occurs.

5. The language governing the registration requirements of the mineral registration act is not unconstitutionally vague.

Hanft, Fride, O'Brien & Harries and Tyrone P. Bujold and Paul J. Lokken, Duluth, for appellants.

Warren Spannaus, Atty. Gen., C. Paul Faraci, Deputy Atty. Gen., Philip Olfelt, Asst. Atty. Gen., Stephen G. Thorne, Sp. Asst. Atty. Gen., Keith Brownell, County Atty., Leo McDonnell, Asst. County Atty., Duluth, Kent Tupper, Walker, for respondents.

Heard, considered, and decided by the court en banc.

KELLY, Justice.

In 1969 the legislature enacted Minn. St. 93.52, which required every owner of a fee simple interest in minerals which interest is owned separately from the fee title to the surface of the property [hereinafter referred to as severed mineral interests] to file for record a verified statement describing that interest with the register of deeds or the register of titles in the county where the interest is located. Minn. St. 93.52, subd. 2. The purpose of this requirement, as stated by the legislature, was:

> "* * * [T]o identify and clarify the obscure and divided condition of severed mineral interests in this state. Because the ownership condition of many severed mineral interests is becoming more obscure and further fractionalized with the passage of time, the development of mineral interests in this state is often impaired. Therefore, it is in the public interest and serves a public purpose to identify and clarify these interests." Minn. St. 9352, subd. 1.

Notice of the registration requirement was provided by publication of the legislation in legal newspapers within each county of the state and in two publications related to mining activities having nationwide circulation. Minn. St. 1971, § 93.58.

In 1973 the legislature enacted additional legislation concerning severed mineral interests which is the basis for this action. L. 1973, c. 650, art. XX hereafter referred to as mineral registration act. First, the legislature provided that anyone who failed to file the verified statement within the statutory period would forfeit that interest to the state. The only remedy for persons claiming an ownership interest at

the time of forfeiture was the recovery of the fair market value of the mineral interest at the time of the forfeiture or at the time of trial, whichever is lesser. Minn. St. 93.55. The legislature found the additional legislation necessary "to provide adequate identification of [severed mineral interests] and to prevent the continued escape from taxation of obscure and fractionalized severed mineral interests." Minn. St. 272.039.

Secondly, the legislature subjected severed mineral interests not otherwise taxed to a tax of $.25 per acre per year or $2.00 per interest per year, whichever is greater. Minn. St. 272.04, subd. 1; 273.13, subd. 2a. In describing the basis for implementing the tax the legislature enacted the following:

> "The legislature finds, for the reasons stated below, that a class of real property has been created which, although not exempt from taxation, is not assessed for tax purposes and does not therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of *Washburn v. Gregory*, 1914, 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where mineral interests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) Since this 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis, and (3) The absence of taxation of mineral interests

owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and mineral estates and resulted in the creation of hundreds of thousands of acres of untaxed mineral estate lands which thus are immune from tax forfeiture. The legislature also finds that the province of Ontario in Canada, which has land ownership patterns and mineral characteristics similar to that of Minnesota, has imposed a tax of $.50 an acre on minerals owned separately from the surface since 1968, and $.10 an acre before that. The legislature further finds that the identification of separately owned mineral interests by taxing authorities requires title searches which are extremely burdensome and, where no public tract index is available, prohibitively expensive. This result is caused in part by the decision in *Wichelman v. Messner*, 1957, 250 Minn. 88, 83 N.W.2d 800, where the so called '40 year law' was held inapplicable to mineral interests owned separately from surface interests. On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 273.13, subdivision 2a is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years * * *." Minn. St. 272.039.

Plaintiffs, owners of severed mineral interests situated primarily in northern Minnesota, brought this action seeking a declaration that the registration, forfeiture and tax provi-

sions of the mineral registration act are unconstitutional and an injunction prohibiting their enforcement. The district court, siting (sic) without a jury, entered findings of fact which agreed with the legislative findings quoted previously. In addition the district court incorporated in its findings a description of the history and magnitude of the severed interest phenomenon contained in an amicus brief prepared by attorney W. K. Montague for the case of *Kangas-Jacobsen Dairy, Inc. v. Lloyd-Smith*, 241 Minn. 317, 62 N.W.2d 915 (1954):

> "They [severed mineral interests] are of wide extent: the entire length of the Mesabi Range from Gunflint Lake * * * down to Grand Rapids, to a width of probably twenty miles from the iron formation, is blanketed with mineral reservations, on each side of the east end of the Mesabi Range through Lake and Cook counties down to Lake Superior, a distance of fifty to sixty miles, nearly every forty has a mineral reservation. Large areas in Carlton and Crow Wing Counties are similarly covered. While we are not familiar with details of mineral reservations in other Northern Minnesota counties, we understand they are not uncommon. Every city and village on the Mesabi Range from Aurora through Eveleth, Virginia, Chisholm, Hibbing, down to Coleraine, is located on lands subject to mineral reservations. Every home, store, factory and farm in that area is subject thereto."

The district court's findings of fact concerning the taxation of severed mineral interests also incorporated a description contained in the amicus brief of attorney Montague:

> "In a substantial number of cases the reservations [severed mineral interests] were created as a result

> of the tax laws, and do not represent arm's length negotiations between parties. They represent deliberate attempts to arrange a transaction under which the grantor could retain for generations his speculative interest in the minerals without carrying charges, and, if merchantable ore should ever be discovered, could re-acquire the surface without cost."

The district court specifically found that 140,000 to 145,000 acres of the 721,640 acres of severed mineral interests owned by plaintiff United States Steel were created through a series of transactions between United States Steel and its subsidiaries whose purpose was to avoid ad valorem property taxes on property valuable primarily for its mineral potential. The district court further found that plaintiffs paid ad valorem property taxes on approximately 3,212 of their 1,262,664 acres of severed mineral interests.[1] Reference to additional findings of fact follows where appropriate.

Based on its findings of fact the district court concluded that the registration, taxation, and forfeiture provisions were constitutional but that the procedures attending the forfeiture provisions were unconstitutional. By virtue of the latter conclusion the district court further concluded that defendants be enjoined from claiming or asserting an ownership in plaintiffs' mineral interests by reason of the forfeiture procedures. Judgment was entered accordingly. Plaintiffs appeal from that part of the judgment upholding the registration, taxation and forfeiture provisions; defendants appeal from that part of the judgment invalidating the procedures attending forfeiture and granting injunctive relief. We affirm the judgment of the district court in all respects.

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[1] Of the 3,212 acres the majority were taxed at $1.00 per acre pursuant to the tax on unmined taconite. Minn. St. 298.26.

The issues presented are the following: (1) Whether the classification of severed mineral interests for purposes of taxation violates the uniformity clause of the Minnesota Constitution; (2) whether the uniformity clause of the Minnesota Constitution requires that taxation of property be related in some way to its value; (3) whether the forfeiture provisions violate the due process clauses of the state and Federal constitutions; (4) whether the procedures attending the forfeiture provisions comport with the due process clauses of the state and Federal constitutions; and (5) whether the language governing the registration requirements is unconstitutionally vague.

[1-3] 1. The uniformity clause of the Minnesota Constitution reads in part:

> "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes * * *." Minn. Const. art. 10, § 1.

In applying that provision we have stated that the legislature has a wide discretion in classifying property for purposes of taxation.[2] Where the classification has a reasonable basis in fact, the judgment of the legislature will not be disturbed. See *Johnson v. Donovan*, 290 Minn. 421, 188 N.W.2d 864 (1971); *State v. Minnesota Farmers' Mut. Ins. Co.*, 145 Minn. 231, 176 N.W. 756 (1920). Every presumption being invoked in favor of the constitutionality of an act of the legislature, plaintiffs have the burden of proof to show beyond a reason-

[2] The uniformity clause of our state constitution is no more restrictive upon the legislature's power to tax or classify than is the Equal Protection Clause of the Fourteenth Amendment. *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974). The United States Supreme Court has stated that where taxation is concerned and no specific Federal right, other than equal protection, is involved, the states have considerable discretion. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973).

able doubt that the act conflicts with the uniformity clause of the state constitution. See *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974).

Plaintiffs contend that they have met their burden in that the record shows that there is no difference between severed and unsevered mineral interests which can constitutionally justify the tax imposed on the former[3] without similar treatment of the latter. Specifically plaintiffs argue that, to the extent severed mineral interests have gone untaxed, so too have unsevered mineral interests escaped taxation. In addition plaintiffs argue that the practical problems attending the taxation of severed mineral interests; i.e., the difficulty in valuating and assessing severed mineral interests, apply with equal force to unsevered mineral interests. We disagree with plaintiffs' view of the record.

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[3] The pertinent provisions of Minn. St. 273.13, subd. 2a, which subjects severed mineral interests to taxation, read in part: "Class 1b. 'Mineral interest', for the purpose of this subdivision, means an interest in any minerals, including but not limited to gas, coal, oil, or other similar interest in real estate, which is owned separately and apart from the fee title to the surface of such real property. Mineral interests which are filed for record in the offices of either the county recorder or registrar of titles pursuant to sections 93.52 to 93.58, constitute class 1b, and shall be taxed as provided in this subdivision unless specifically excluded by this subdivision. A tax of $.25 per acre or portion of an acre of mineral interest is hereby imposed and is due and payable annually. If an interest filed pursuant to sections 93.52 to 93.58 is a fractional undivided interest in an area, the tax due on the interest per acre or portion of an acre is equal to the product obtained by multiplying the fractional interest times $.25, computed to the nearest cent. However, the minimum annual tax on any mineral interest is $2. No such tax on mineral interests is due and payable on the following: (a) Mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests; (b) Mineral interests which are exempt from taxation pursuant to constitutional or related statutory provisions * * *."

Upon the evidence the district court entered the following finding of fact:

> "Where taxable real property includes the rights to both surface and mineral interests (estates), the assessed valuation, and hence the property tax levied, reflects the value, if any, assigned by market forces to the totality of these rights. Plaintiffs have failed to demonstrate that such 'unsevered' mineral rights have, like severed mineral interests, escaped ad valorem property taxation."

This finding is supported by the testimony of Peter N. Handberg, the St. Louis County Assessor. He testified that in determining the "market value" of a parcel of land for tax purposes he looks to "sales of comparable properties wherever they are available," and that for rural lands (which account for the bulk of severed mineral interests) "sales are the only basis" for determining market value. These comparisons are made on the assumption that the entire "bundle of rights" that comprise the fee simple interest in the parcel, including mineral rights, are merged in one owner.

[4, 5] The value determined by this method might very well be affected by the value of the mineral rights. Mr. Handberg so testified in response to a question put to him by one of plaintiffs' attorneys:

> "Q. Now, as a practical matter, in St. Louis County, with the exception of the Mesabi or Biwabik Iron formation * *, would you agree that the practice is and has been as long as you have known it, not to include the value of the minerals in arriving at an assessment where there is no objective evidence or reliable data to indicate whether or not there are minerals located therein?
>
> THE WITNESS [Mr. Handberg]: I don't think that's a correct statement. I think that the value we put on the

property based on sales of similar property do include a mineral value. For example, if the property is sold in an area where the mining companies are interested or many properties are sold, it drives up the sales prices of the property, and so we use the sale prices as a basis of our valuation."

The fact that assessors may not value mineral interests as a separate item is not significant. As Mr. Handberg's testimony clearly shows the value of a piece of property is a composite of a number of factors, one of which includes the value of the mineral interests if unsevered. *Cf. Independent School Dist. No. 99 v. Commr. of Taxation*, 297 Minn. 378, 211 N.W.2d 886 (1973). In determining market value of property for ad valorem tax purposes, assessing authorities should consider and give due weight to every element and factor affecting market value. Therefore the district court's finding that unsevered mineral interests are valued and taxed under the normal ad valorem property tax system is adequately supported by the evidence. Since none of the parties disputes the district court's findings that severed mineral interests have escaped taxation, we cannot say that the separate classification of severed mineral interests is without a reasonable basis in fact. *Johnson v. Donovan, supra.*

Concerning the separate taxation of severed mineral interests the district court made two critical findings. First, the district court found that most severed mineral interests cannot be assessed for ad valorem property tax purposes for two reasons:

"(1) The value of the mineral in the ground can only be determined by prohibitively expensive exploration such as drilling and drill core analysis; and

(2) Data currently available to assessors on sales and exchanges of the property rights in mineral estates (i. e., severed mineral interests) is very limited. Therefore, in most cases such available data is insufficient to permit the derivation of market values for individual severed mineral interests from the sales prices or values of comparable interests."

Second, the district court found that every mineral interest in Minnesota has some value as a property interest regardless of its location, although the value of mineral interests may vary from one part of the state to another. The first finding is not contested.

Plaintiffs vigorously contest the second finding. They rely on the expert testimony of Donald Lindgren, a geologist, who testified that the value of plaintiff's mineral interests vary widely in value, some having no economic value at the present time. The record also contains, however, testimony of other expert witnesses who detailed the abundance and distribution of minerals within the state, the history of mineral development, and the potential for future development. Even Mr. Lindgren testified to the potential for future development. On this record we cannot say that the district court's finding is clearly erroneous.

In sum the evidence supports the legislature's findings that a class of valuable property interests were escaping taxation because of the practicable difficulties in identifying, valuing, and assessing those interests within more traditional tax schemes. In light of this evidence we cannot say that the practical considerations which prompted the legislature to classify separately severed mineral interests and to impose a tax of $.25 per acre per year or $2.00 per year, whichever is greater, were unreasonable.

That practical considerations can serve as the basis for the classification and taxation of property was established long ago in *Mutual Benefit Ins. Co. v. County of Martin*, 104 Minn. 179, 116 N.W. 572 (1908).[4] There this court upheld the taxation of mortgages separately from other personalty with the following language:

> "There were good and sufficient reasons why a special method should be devised for the taxation of this kind of property. It is a notorious fact that the owners of securities in the form of bonds and notes have not been in the habit of paying their proportionate share of the taxes. This has been due in a measure to the ease with which the existence of such property can be concealed from the tax officials. But when the owner of a note takes a mortgage on real estate as security and places it upon the public records, he exposes his ownership * * * and enables the assessor to reach him. * * The owner is thus tempted to seek some devious method for escaping taxation, in order that he may be on an equality with the owner of an unsecured note or bond, which rests undiscovered in a safety deposit vault. * * * *Experience has shown that it is very difficult, if not impossible, to fairly and successfully tax this kind of property under the system ordinarily applied to personal property. This practical difficulty alone furnishes a basis for a classification, and justifies the legislature in devising a special method for the taxation of the subjects of that class.* * * * By requiring a registration tax, every mortgage security pays a

[4] The United States Supreme Court has also recognized practical considerations as sufficient bases for state tax classifications. See *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973); *Madden v. Kentucky*, 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590 (1940).

moderate tax, and this, in the judgment of the legislature, is preferable to the certain uncertainties of the old system." (Emphasis added.) 104 Minn. 182, 116 N.W. 574. Cf. *Johnson v. Donovan, supra.*

We think the reasoning in the *Mutual Benefit* case applies with equal force here. Here the taxation of severed mineral interests in the same manner as other realty proved to be impracticable and also, because of this impracticability, had encouraged the separate ownership of surface and mineral estates. A class of property having some value was not paying its proportionate share of taxes. The remedy chosen by the legislature was to tax mineral interests on a uniform basis, which is but one part of the general system of mineral taxation. The tax is imposed only on those mineral interests not "valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil or other similar interests." Minn. St. 273.13, subd. 2a. For example: the state tells us that where the value of the minerals themselves is determined, a tax is levied on the basis of such value. Unmined iron ore, except certain low recovery ore, is designated as Class 1a real property, presently assessed at 50 percent of its market value, and taxed at the prevailing mill rate. Minn.St. 273.13, subd. 2. Low recovery iron ores also fall within class 1a but are valued at from 30 percent to 48½ percent of market value. Minn.St. 273.15. Unmined taconites and iron sulphides are to be assessed and taxed on the basis of value with the one important difference that the tax may not exceed $10.00 per acre. Minn. St. 298.26. Finally, all other severed mineral interests, to the extent they can be valued, are susceptible to ad valorem taxation pursuant to Minn.St. 272.04 in the same manner as other interests in land. In effect the legislature has directed that severed mineral interests be taxed in relation to value or

production where possible but that under no circumstances can such an interest be taxed at less than $2.00 per interest. We cannot say that the legislature has exceeded its discretion.

The cases upon which plaintiffs rely do not compel a contrary conclusion. In *State ex rel. Owen v. Donald*, 161 Wis. 188, 153 N.W. 238 (1915), the plurality opinion declared unconstitutional a statute which imposed a tax on severed mineral interests. The concurring opinion of Justice Timlin, however, indicates that the reason the statute was invalid was because its tax forfeiture provisions treated owners of severed mineral interests differently from owners of other property interests. Likewise, in *Northwestern Improv. Co. v. Morton County*, 78 N.D. 29, 47 N.W.2d 543 (1951), the statute taxing severed mineral interests was unconstitutional because it imposed a tax on severed mineral interests created by reservations in deeds but did not tax severed mineral interests created by a direct conveyance of the mineral interest. The court cited an earlier decision upon which plaintiffs heavily rely, *Northwestern Improv. Co. v. State*, 57 N.D. 1, 220 N.W. 436 (1928), only for the proposition that a classification cannot be based solely on the manner mineral rights are severed from the surface interest. The North Dakota Supreme Court did not give the decision the broad interpretation the plaintiffs urge this court to adopt.

[6] 2. Plaintiffs also argue that the Minnesota Constitution requires that real property taxes be related to value. Plaintiffs have cited no authority, however, and we have discovered none, that directly supports their argument. To the contrary the language of the constitution and its interpretation by this court suggest that the controlling constitutional provision was specifically amended to eliminate the absolute requirement that taxes be related to value.

The Minnesota Constitution currently provides only that "[t]axes shall be uniform upon the same class of subjects * * *." Minn. Const. art 10, § 1. Prior to 1906, however, the Minnesota Constitution required "taxes to be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state." Minn. Const. art. 9, § 1 (1857), amended 1869, 1881, 1894, 1906. Interpreting the prior constitutional language, this court declared unconstitutional a probate fee arbitrarily based upon a cash valuation, *State v. Gorman*, 40 Minn. 232, 41 N.W. 948 (1889); and a tax of one per cent per ton on iron ore mined within the state. *State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898). In response to a number of unfavorable tax decisions the people of the state amended the constitution in 1906 to its present broad provision. Anderson, *The Need for Constitutional Revision in Minnesota*, 11 Minn. L. Rev. 189, 204. The purpose of the 1906 amendment was to free the legislature from most of the previous constitutional restraints.

> "The fair adjustment of tax burdens * * * demanded more comprehensive powers in the legislature; and the people, relying upon the responsibility of that body to its constituents, relaxed the restraints theretofore existing." *Reed v. Bjornson*, 191 Minn. 254, 259, 253 N.W. 102, 104 (1934).

The "wide-open tax amendment," as it was popularly called, eliminated the "absolute requirement of taxation of all property on the basis of a cash valuation." W. Anderson, A History of the Constitution of Minnesota 190 (1921).

The cases upon which plaintiffs rely do not directly support their position. In *Independent School Dist. No. 99 v. Commr. of Taxation*, 297 Minn. 378, 211 N.W.2d 886 (1973), this court

reversed a decision of the Tax Court because the record did not indicate whether the assessing authorities considered every element affecting market value as required by the statutory scheme. The decision did not, however, contain any language indicating market value was a constitutional requirement. Similarly, plaintiffs' reference to Minn. St. 273.11 as legislative recognition that property must be taxed according to value can be equally rationalized as a legislative recognition of equality. See *In re Petition of Dulton Realty, Inc. v. State*, 270 Minn. 1, 15, 132 N.W.2d 394, 405 (1964).

[7, 8] Nor are cases involving the validity of assessments for real estate taxes persuasive. See *In re Petition of Dulton Realty, Inc. v. State, supra; In re Petition of Hamm v. State*, 255 Minn. 64, 95 N.W.2d 649 (1959). Both cases simply require that taxes on any one piece of property be uniform in relation to the taxes levied on other property of the same class. It is true that this court said, in reference to the uniformity clause, that it does not "permit the adoption of an arbitrary yardstick of valuation for all properties which ignores their differences in actual market value." 255 Minn. 70, 95 N.W.2d 654. Here however, none of the parties contest the fact that severed mineral interests cannot readily be valued. Taken together with the district court's finding that every mineral interest has some value as a property interest regardless of its location, the uniform tax imposed on severed mineral interests represents a reasonable exercise of the legislature's authority to tax a class of real property that has escaped taxation. The uniformity clause does not require absolute equality:

> "* * * The distribution of the tax burden in such manner as seems equitable is recognized as a proper exercise of the power of taxation. The selection of sub-

> jects of taxation * * * is inherent in that power. The process of selection involves classification with resulting diversity in the subjects selected for taxation * * * as well as in the amount of the tax." *C. Thomas Stores Sales System, Inc. v. Spaeth*, 209 Minn. 504, 297 N.W. 9, 16 (1941).

As noted earlier the separate classification of severed mineral interests is reasonable. Therefore the fact that the amount of tax may vary in some instances depending on the number of owners does not make the tax constitutionally infirm.[5]

Plaintiffs also have referred to cases from other jurisdictions which support their position. See, e.g., *State of Texas v. Federal Land Bank of Houston*, 160 Tex. 282, 329 S.W.2d 847 (1959); *Chicago and Northwestern Transportation Co. v. Pederson*, Bayfield County Circuit Court, December 18, 1975, affirmed, 80 Wis.2d 566, 259 N.W.2d 316 (1977). Those decisions are not persuasive, however, since those jurisdic-

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[5] Plaintiffs made a further argument that a tax which exceeds the value of the property tax is unconstitutional. The test whether a tax statute violates the due process clause of the Fourteenth Amendment is whether the tax is within the lawful power of the legislature. The due process clause is applicable only if the tax is so arbitrary as to compel the conclusion that the statute does not involve the exercise of the taxing power but a direct exercise of a different and forbidden power. *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 54 S.Ct. 599, 78 L.Ed. 1109 (1934). Any attempt to determine the constitutionality of a tax by its amount furnishes "no juridical ground for striking down a taxing act." 292 U.S. 47, 54 S.Ct. 602, 78 L.Ed. 1116.

On this record we cannot say that the tax imposed on severed mineral interests is so arbitrary as to violate due process. The record clearly establishes that severed mineral interests were not paying any taxes, that some severed mineral interests were created to avoid ad valorem taxation, and that severed mineral interests have some value. The legislature's response, which assures that all severed mineral interests will pay at least some tax, is not unreasonable as an exercise of its power to tax.

tions contain constitutional provisions dissimilar from that in our constitution. For example, the Texas Constitution expressly requires that all property be taxed in proportion to its value. Tex Const. art. 8, § 1. Similarly, the Wisconsin Supreme Court, interpreting that state's uniformity clause, has stated that all property taxed must bear its burden equally on an ad valorem basis. See *Gottlieb v. Milwaukee*, 33 Wis.2d 408, 424, 147 N.W.2d 633, 641 (1967).

3. The statutory scheme at issue requires the owners of severed mineral interest to file a verified statement containing, *inter alia*, the legal description of the property upon or beneath which the severed mineral interest exists, and information indicating where the instrument from which the severed mineral interest was created or acquired, may be found. Minn. St. 93.52, subd. 2. If the owner of a severed mineral interest fails to file the verified statement within the allotted time period, the mineral interest forfeits to the state. Minn. St. 93.55. Plaintiffs argue that the registration and forfeiture provisions violate the due process clauses of the state and Federal constitutions.

[9, 10] Where an economic regulation is involved, due process requires that legislative enactments not be arbitrary or capricious; or, stated differently, that they be a reasonable means to a permissive objective. *Lee v. Delmont*, 228 Minn. 101, 36 N.W.2d 530 (1949); *McElhone v. Geror*, 207 Minn. 580, 292 N.W. 414 (1940); *Nebbia v. New York*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934). Due process demands only that (1) the act serve to promote a public purpose, (2) it not be an unreasonable, arbitrary or capricious interference, and (3) the means chosen bear a rational relation to the public purpose sought to be served. *Federal Distillers, Inc. v. State*, 304 Minn. 28, 229 N.W.2d 144, appeal dismissed, *sub nom.*,

Heaven Hill Distillers, Inc. v. Novak, 423 U.S. 908, 96 S.Ct. 210, 46 L.Ed.2d 137 (1975).

Plaintiffs do not seriously quarrel with the purpose of the act, which is to identify and clarify the obscure and divided ownership conditions of several mineral interests in order to facilitate their development. Minn. St. 93.52, subd. 1. Plaintiffs do argue, however, that the registration requirement is unreasonable in that the record indicates that owners of severed mineral interests are not difficult to locate. But the record also contains evidence indicating that a large number of mineral interests were severed in the late nineteenth century and early twentieth century, that a large number of the severed mineral interests are fractionalized, and that the determination of ownership of the fractionalized mineral interests is time consuming and often hinders exploration and development of minerals. On this record we cannot say that registration requirement is unreasonable.

[11] Plaintiffs alsc argue that the forfeiture provisions bear no reasonable or legitimate relationship to any end sought by the registration requirements. The basis for their argument is that under the prior statutory scheme, owners of severed mineral interests were given until January 1, 1975, to file the verified statements of ownership. The penalty imposed for the failure to file was to permit the Commissioner of Natural Resources to lease the mineral interest as agent for the owner. Minn. St. 1971, § 93.52, subd. 2; § 93.55. Prior to the filing deadline, however, the legislature enacted the forfeiture provisions as the penalty for failure to comply with the registration requirement. Thus plaintiffs argue that the legislature was in no position to know whether the forfeiture provisions were necessary or not. While the record indicates that some statements were not filed before the

forfeiture provisions were in effect because the deadline had not expired, the record also indicates that, for whatever reason, the filings were not being made. Therefore the legislature could conclude that the penalty of forfeiture was necessary to ensure that the necessary filings would be made. The legislature also could have concluded that the former penalty provisions, i.e., allowing the state to lease the mineral interest, were inadequate in light of the tax imposed on severed mineral interests. Owners of severed mineral interests might well be reluctant to make the necessary filings and thereby subject their interest to taxation. Given the public purpose of the act, the means chosen by the legislature do not violate due process.

[12] 4. The statutory scheme at issue required that notice of the registration requirement and the attendant forfeiture provisions be given by publication of the scheme in a legal newspaper within each county in the months of October, November and December, 1973, and in two publications related to mining activities which have a nationwide circulation. Minn. St. 93.58. The scheme also provided that if the owner of a severed mineral interest fails to make the required filings within the allotted time period, the mineral interest forfeits to the state. Minn. St. 93.55. Thereafter anyone claiming an ownership interest in a severed mineral interest before forfeiture may commence an action to determine ownership and the fair market value both at the time of forfeiture and the time of bringing the action. The successful claimant recovers lesser of the two values. Id. Plaintiffs argue that the statutory scheme violates the due process clauses of the state[6] and Federal constitutions[7] beause the notice provi-

[6] Minn. Const. art. 1, § 7.
[7] U.S. Const. Amend. XIV.

sions are inadequate and because an owner of a severed mineral interest who fails to comply with the registration requirement is denied an opportunity for a hearing before the forfeiture occurs. We agree.

[13] At a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case. *Mullane v. Central Hanover, etc., Tr. Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). The *Mullane* court discussed the sufficiency of notice as follows:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (Citations omitted.) The notice must be of such nature as reasonably to convey the required information * * *. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." 339 U.S. 314, 70 S.Ct. 657, 94 L.Ed. 873.

The question is whether the state's efforts of notification can be said to be reasonably calculated to apprise the owners of severed mineral interests of the pendency of the forfeiture. Cf. *Robinson v. Hanrahan*, 409 U.S. 38, 93 S.Ct. 30, 34 L.Ed.2d 47 (1972).

The state argues that notice by publication is constitutionally adequate here because of the practicalities and peculiarities associated with identifying and locating owners of severed mineral interests. See Minn. St. 93.52, subd. 1. It is true that the St. Louis County Assessor testified that information concerning the identification and ownership of severed min-

eral interests is not contained in public records and, where contained in private abstract records, is prohibitively expensive to obtain. But the record also contains testimony indicating that owners of severed mineral interests could be identified and located. The statute as written, however, does not distinguish between those owners who could be identified with little or no diligence and those whose identity, even with due diligence, could not be ascertained. Under these circumstances, we think notice by publication of the statutes alone is inadequate.

[14] The United States Supreme Court has recognized that publication alone is not a reliable means of acquainting interested parties of the fact that their interests are subject to forfeiture:

> "* * * Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper * * *." *Mullane*, 339 U.S. 315, 70 S.Ct. 658, 94 L.Ed. 874.

We likewise have recognized the unreliability of notice by publication. *Meadowbrook Manor, Inc. v. City of St. Louis Park*, 258 Minn. 266, 104 N.W.2d 540 (1960). In the instant case the chance of notice is further reduced in that the notice required to be published does not name those whose attention it is supposed to attract. Furthermore the state is not required to do anything, e.g., attachment, entry upon real estate, which might reasonably be expected to call to the owner's attention that his mineral interest is subject to forfeiture. Under these circumstances, notice by publication is inadequate where forfeiture is the penalty imposed for mere failure to act. Cf. *Lambert v. California*, 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957).

[15] We are also in agreement with plaintiffs' argument that the statutory scheme attending the forfeiture provisions

violates due process because it contains no provision for a hearing to determine the validity of the forfeiture. Due process requires, except in emergency situations, a hearing that is meaningful and appropriate to the nature of the case before a party can be deprived of a property interest. *Mullane, supra.* The statute in question contains, in part, the following language:

> "If the owner of a mineral interest fails to file the verified statement * * * the mineral interest shall forfeit to the state. * * * After the mineral interest has forfeited to the state pursuant to this section, a person claiming an ownership interest before the forfeiture may recover the fair market value of the interest, only in the following manner. An action must be commenced within six years after the forfeiture under this section to determine the ownership. * * *." Minn. St. 93.55.

The language of the statute clearly provides that, upon the failure to file the verified statement, the mineral interest forfeits to the state; the only judicial determination to be made is whether the party thereafter claiming an ownership interest was the owner at the time of forfeiture. The only remedy available to an owner whose interest has forfeited is the following:

> "* * * Persons determined by the court to be owners of the interests at the time of forfeiture to the state under this section may present to the commissioner of finance a verified claim for refund of the fair market value of the interest. * * * Thereupon the commissioner of finance shall refund to the claimant the fair market value at the time of forfeiture or at the time of bringing the action, whichever is lesser, less any taxes, penalties, costs, and interest which could have been collected during

> the period following the forfeiture under this section, had the interest in minerals been valued and assessed for tax purposes at the time of forfeiture under this section * * * Minn. St. 93.55.

We cannot imagine a more clear violation of due process than the failure to provide a hearing before forfeiture. *Mullane, supra.*

[16] Defendants argue that the constitutionally-required hearing is merely postponed and that the remedy provided is adequate under the circumstances. Defendants rely on *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), wherein the court stated that, in limited circumstances, immediate seizure of a property interest, without an opportunity for a prior hearing, is constitutionally permissible. In determining whether an immediate seizure of a property interest may be constitutionally permissible, the court looks at the following: (1) whether the seizure is necessary to secure an important governmental or general public interest, (2) whether there exists a special need for very prompt action, and (3) whether the state has kept strict control over its monopoly of force.

We do not think the *Fuentes* exception is applicable. First, in those cases cited by the Supreme Court as employing the exception, a party whose property interest was subjected to immediate seizure had an opportunity to contest the seizure itself. See, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974); *Robinson v. Hanrahan*, 409 U.S. 38, 93 S.Ct. 30, 34 L.Ed.2d 47 (1972); *Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931). No such opportunity is available here.

Second, assuming arguendo that the *Fuentes* exception is applicable, defendants have not indicated why the prompt forfeiture provisions are necessary. See, e. g., *North American, etc., Storage v. Chicago*, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (1908) (postponement of notice and hearing constitutionally permissible to protect public from contaminated food). While forfeiture may be a necessary incentive to ensure filing, there does not appear to be any special need to dispense with the constitutionally required hearing before the forfeiture. Defendant's argument based on *Fuentes* is not persuasive.

Defendants also argue that the registration and forfeiture provisions contained in the mineral registration are sufficiently analogous in effect to the marketable title act, Minn.St. 541.023, which was upheld in *Wichelman v. Messner*, 250 Minn. 88, 83 N.W.2d 800 (1957), as to allow the constitutionality of the former to be sustained on the strength of the latter. Briefly stated, the court's holding in *Wichelman* sustained the constitutionality of the marketable title act, which required those owning interests in "old conditions and restrictions," e. g., right of re-entry, possibility of reverter, to record notice of the continued existence of such rights or permit their extinguishment by the barring of future actions affecting possession based on any such conditions or restrictions.

Specifically defendants argue that the enactment of the legislation, the publication of the act's provisions in a legal newspaper in each county throughout the state, and the time period allowed within which to make the required filing, are sufficient to comport with due process. Defendants point out that a period of 9 months within which to file the required notice was approved vis-a-vis the marketable title act; the mineral registration act allowed at least 19 months. In *Wichelman*, however, the court discussed the amount of time given

to make the required filings, not with respect to the sufficiency of notice, but with respect to the constitutional prohibition against retrospective legislation. The court specifically stated that lack of notice was not a valid consideration. 250 Minn. 110, 83 N.W.2d 818. In any event we do not find defendants' analogy between the mineral registration act and the marketable title act to be persuasive.

The marketable title act was intended, as its name indicates, to "relieve a title from the servitude of provisions contained in ancient records which 'fetter the marketability of real estate.'" *Wichelman, supra,* 250 Minn. 100, 83 N.W.2d 812. The legislature may have concluded that the servitudes arising from ancient records had outlived the reasons for their creation, that they may have been created for the benefit of persons who are disinterested in the observance of the conditions and restrictions, and that the interests impede the full economic use of property. Further, the marketable title act provided that the person against whom the act is invoked is conclusively presumed to have abandoned his interest in the property. Minn. St. 541.023, subd. 5. Thus the marketable title act was not intended to extinguish valid but inconvenient claims. The mineral registration act, on the other hand, extinguishes valid as well as invalid claims upon the mere failure to file. It is unlikely that the holders of mineral rights have any intention of abandoning their rights; thus, any conclusive presumption of abandonment would be devious and would amount to intellectual dishonesty. Under these circumstances publication is not adequate.

Again analogizing to the marketable title act and its interpretation in *Wichelman, supra,* defendants argue that the mineral registration act can be sustained as a statute of

limitations in that the failure to file under either scheme divests an owner of a property interest. We disagree.

The purpose of a statute of limitations is to "prescribe a period within which a right may be enforced, afterwards withholding a remedy for reasons of private justice and public policy." *Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171, 176, 275 N.W. 694, 697 (1937). Statutes of limitations generally affect the remedy and not the right. *Baker v. Kelley*, 11 Minn. 480 (1866). The United States Supreme Court has recognized that the distinction between substantive rights and remedial or procedural rights vis-a-vis statutes of limitation may not be clear cut. Nevertheless the court has adopted as a matter of constitutional law the hypothesis that statutes of limitation go to matters of remedy, not to destruction of rights. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945). The mineral registration act, however, directly affects a property interest without any pretense of affecting a remedy only. The effect of defendants' argument is to destroy the distinction between substantive rights and procedural rights. While we recognize that the distinction may in some cases be difficult to discern, this case is not one of them.

Finally, defendants argue that the constitutionality of the mineral registration act can be sustained on the authority of the marketable title act in that both have the sanctions of a recording act.[8] In support of their position defendants make the following points. First, the penalty for failure to comply with the marketable title act, as with the mineral registration

[8] There is no question that recording acts are constitutional as a valid exercise of the police power. *Jackson v. Lamphire*, 28 U.S. (3 Pet.) 280, 7 L.Ed. 679 (1830). See *American Land Co. v. Zeiss*, 219 U.S. 47, 31 S.Ct. 200, 55 L.Ed. 82 (1911).

act, is the possibility of complete divestiture of ownership of a property interest. Second, under both the marketable title act and the mineral registration act, forfeiture may be prevented by filing the required information. Finally, as noted in *Wichelman, supra*, the marketable title act and the mineral registration act both have as their justification improving the marketability of real estate. Therefore defendants conclude the mineral registration act is a valid exercise of the police power.

While the analogy to the sanctions of a recording act may have been proper in the context of the marketable title act which was directed principally at interests in property which have outlived the reasons for their creation, that analogy is not proper here. It is true that both the marketable title act and the mineral registration act attempt to remedy defects in the recording system through the imposition of similar penalty provisions. To that extent defendant's analogy is appropriate but only to that extent. As noted previously, the mineral registration act is not directed at interests created in ancient records which have outlived their usefulness but at all severed mineral interests whenever created. Further the marketable title act was limited to stale claims which could be presumed to be abandoned and of no value. The mineral registration act however, is not so limited. As the district court found, every mineral interest has some value as a property interest; some of plaintiffs' interest has some value as a property interest; some of plaintiffs' interests appear to be enormously valuable. Finally, the mineral registration act and traditional recording acts are easily distinguished by their operation and effect. The failure to file under a recording act does not automatically result in divestiture. Recording acts typically divest the rights of a grantee in an unrecorded conveyance

only if his grantor conveys the same interest to a subsequent purchaser who purchases in good faith and for value. See Minn. St. 507.34. Since the consequences of failing to file are so different, what satisfies due process in terms of a recording act is not sufficient for the mineral registration act.

5. Plaintiffs argue that certain language used in Minn. St. 93.52, subd. 2, is so vague and ambiguous as to violate due process. The statute, with emphasis on the challenged language, reads in part as follows:

> "* * * [E]very owner of a fee simple interest in *minerals*, hereafter referred to as a mineral interest, in lands in this state, which interest is owned separately from the fee title to the surface of the property upon or beneath which the mineral interest exists, shall file for record * * * in the county where the mineral interest is located a verified statement citing section 93.52 to 93.58 and setting forth his address, his *interest in the minerals* and both (1) the legal description of the property upon or beneath which the interest exists, and (2) the book and page number or the document number * * * of the instrument by which the mineral interest is *created or acquired* * * *." (Emphasis added.) Minn. St. 93.52, subd. 2.

[17] In considering plaintiffs' claim we begin with the presumption of constitutionality. A statute will not be declared void for vagueness unless it is so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent. *Wichelman, supra.* We further explicated the general rule in *Wichelman* with the following:

> "* * * A statute will not be declared void for vagueness and uncertainty where the meaning thereof may be im-

plied, or where it employs words in common use, or words commonly understood, or words previously judicially defined, or having a settled meaning in law, or a technical or other special meaning well enough known * * *, or an unmistakable significance in the connection in which they are employed. In short, legislation otherwise valid will not be judicially declared null and void on the ground that the same is unintelligible and meaningless unless it is so imperfect and so deficient in its details as to render it impossible of execution and enforcement, and is susceptible of no reasonable construction that will support and give it effect, and the court finds itself unable to define the purpose and intent of the legislature." 250 Minn. 111, 83 N.W.2d 819.

[18] Applying the legislative policy expressly stated in the mineral registration act, which is to identify and clarify the obscure ownership conditions of severed mineral interests in this state, we conclude that the alleged ambiguities raised by plaintiffs, being subject to reasonable constructions consistent with the legislature's intent, are not unconstitutionally vague. A short discussion of certain ambiguities raised by plaintiffs illustrates our conclusion.

[19] For example, plaintiffs, relying on *Vang v. Mount*, 300 Minn. 393, 220 N.W.2d 498 (1974), argue that the word "mineral" is ambiguous because what is included in a general mineral reservation depends on the intent of the parties and the circumstances surrounding the reservation. It is clear from the language of the statute and from the express legislative intent that the legislature intended owners of all severed mineral interests to register, regardless of what the parties intended to convey. For that reason plaintiffs' reliance on *Vang v. Mount* is misplaced.

[20] Plaintiffs also contend that the phrase "owned separately from the surface" is ambiguous in that a mineral interest once severed but now owned by the same person who owns the surface might be considered still severed for purposes of Minn. St. 93.52, subd. 2. We do not agree. The plain purpose of the mineral registration act is to locate, identify, and tax mineral interests owned by someone other than the owner of the surface interest. Minn. St. 93.52, subd. 1; 272.039. Where the surface and mineral interests are jointly owned, it is obvious that the mineral registration requirements do not apply.

[21] A final example is plaintiffs' argument that the meaning of the requirement that the owner must refer to the "instrument by which the mineral interest is *created or acquired*" is ambiguous, one interpretation being that two such instruments might exist—one which created the instrument and one by which the present owner acquired the interest. The purpose of the statute being to identify current owners, the statute requires the statement in such a case to refer to the instrument by which the mineral interest was acquired. The legislature obviously included the disjunctive "or" in recognition of the fact that there may be cases where no deed or other instrument named the current claimant as owner. In those cases reference to the instrument creating the mineral interest is appropriate. We need not burden this opinion with examples of other ambiguities raised by plaintiffs. It is sufficient to say that the mineral registration act is not unconstitutionally vague.

Affirmed.

SHERAN, C. J., and OTIS and ROGOSHESKE, JJ., took no part in the consideration or decision of this case.

MINNESOTA STATUTES 1982

116J.64 LOANS TO INDIANS.

Subdivision 1. For purposes of this section the following terms shall have the meanings ascribed to them herein.

Subd. 2. "Indian" means a person of one-quarter or more Indian blood and who is an enrolled member of a federally recognized Minnesota based band or tribe.

Subd. 3. "Person" means an individual Indian, or a partnership comprising Indians only, or a corporation whose stock is owned wholly by Indians.

Subd. 4. "Tribal council" means the reservation business committee or equivalent duly constituted tribal authority.

Subd. 5. "Agency" or "department" means the department of energy, planning and development.

Subd. 6. The remaining 20 percent of the tax revenue received by the county auditor under section 273.13, subdivision 2a shall be remitted by the county auditor to the state treasurer and shall be deposited in a special account called the "Indian business loan account", which shall be a revolving fund created and established under the jurisdiction and control of the agency, which may engage in a business loan program for American Indians as that term is defined in subdivision 2. The tribal councils may administer the fund, provided that, before making any eligible loans, each tribal council must submit to the agency, for its review and approval, a plan for that council's loan program which specifically describes, as to that program, its content, utilization of funds, administration, operation, implementation, and other matters required by the agency. All such programs must provide for a reasonable balance in the distribution of funds appropriated pursuant to this section for the purpose of making business loans between Indians residing on and

off the reservations within the state. As a condition to the making of such eligible loans, the tribal councils shall enter into a loan agreement and other contractual arrangements with the agency for the purpose of carrying out the provisions of this chapter, and shall agree that all official books and records relating to the business loan program shall be subject to audit by the legislative auditor in the same manner prescribed for agencies of state government.

Whenever any moneys are appropriated by the state treasurer to the agency solely for the above-specified purpose or purposes, the agency shall establish a separate bookkeeping account or accounts in the Indian business loan fund to record the receipt and disbursement of such moneys and of the income, gain and loss from the investment and re-investment thereof.

Subd. 7. An Indian desiring a loan for the purpose of starting a business enterprise, expanding an existing business, or for technical and management assistance, shall make application to the commissioner. The commissioner shall prescribe the necessary forms and advise the prospective borrower as to the conditions under which his application may be expected to receive favorable consideration. The application shall be forwarded to the appropriate tribal council for approval or disapproval, and shall be in conformity with the plans submitted by said tribal councils. If the application is approved, the commissioner shall forward the application, together with all relevant documents pertinent thereto, to the commissioner of finance, who shall draw his warrant in favor of the applicable tribal council with appropriate notations identifying the borrower. The tribal council shall thereafter reimburse suppliers and vendors for purchases of equipment, real estate and inventory made by the borrower pursuant to the conditions

or guidelines established by the commissioner. The tribal council shall maintain records of transactions for each borrower in a manner consistent with good accounting practice. Simple interest at two percent of the amount of the debt owed shall be charged. When any portion of a debt is repaid, the tribal council shall remit the amount so received plus interest paid thereon to the state treasurer through the commissioner. The amount so received shall be credited to the Indian business loan account. The tribal council shall secure a fidelity bond from a surety company, in favor of the state treasurer, in an amount equal to the maximum amount to the credit of its loan account during the fiscal year. On the placing of a loan, additional money equal to ten percent of the total amount made available to any tribal council for loans during the fiscal year shall be paid to the council prior to December 31 for the purpose of financing administrative costs.

Subd. 8. Loans made under subdivision 7 shall be limited to a period of 20 years, if made for the purpose of financing nonreal estate purchases. Loans made for the purpose of financing real estate purchases, where such real property is to be used for nonresidential purposes only, shall be limited to a period of 40 years, and shall be a lien on the real property so acquired. Under no circumstances shall the state take a position junior to third lien. In instances where it is impossible or undesirable to secure a lien against real property, the state may secure a lien against personal property for an amount equal to the face value of the loan.

Subd. 9. Any person misrepresenting facts regarding the Indian ancestry of a prospective borrower for the purpose of securing a loan under subdivision 7, whether such borrower be an individual, partnership or corporation, shall be guilty of a gross misdemeanor.

Subd. 10. The county auditor shall remit the tax revenue received yearly to the state treasurer as required by subdivision 6 no later than December 15.

Subd. 11. There is appropriated annually an amount equal to the tax revenue allotted under subdivision 7.

History: *1973 c 254 s 3; 1973 c 492 s 14; 1973 c 650 art 20 s 4; 1977 c 430 s 25 subd 1; 1979 c 333 s 100-102; 1980 c 391 s 1-3; 1981 c 308 s 1-7; 1981 c 356 s 210,211,248; 1982 c 424 s 128*

272.039 LEGISLATIVE FINDINGS AND CONCLUSIONS RELATED TO THE TAXATION OF MINERALS OWNED SEPARATELY FROM THE SURFACE.

The legislature finds, for the reasons stated below, that a class of real property has been created which, although not exempt from taxation, is not assessed for tax purposes and does not, therefore, contribute anything toward the cost of supporting the governments which protect and preserve the continued existence of the property. These reasons are as follows: (1) In the case of Washburn v. Gregory, 1914 125 Minn. 491, 147 N.W. 706, the Minnesota Supreme Court determined that where mineral interests are owned separately from the surface interests in real estate, the mineral interest is a separate interest in land, separately taxable, and does not forfeit if the overlying surface interest forfeits for nonpayment of taxes due on the surface interest; (2) Since this 1914 decision, mineral interests owned separately from the surface have been valued and assessed for tax purposes, as a practical matter, only if the value of the minerals has been determined through drilling and drill core analysis; and (3) The absence of any taxation of mineral interests owned separately from the surface, except where drilling analysis is available, has encouraged the separation of ownership of surface and min-

eral estates and resulted in the creation of hundreds of thousands of acres of untaxed mineral estate lands which thus are immune from tax forfeiture. The legislature also finds that the province of Ontario in Canada, which has land ownership patterns and mineral characteristics similar to that of Minnesota, has imposed a tax of $.50 an acre on minerals owned separately from the surface since 1968, and $.10 an acre before that. The legislature further finds that the identification of separately owned mineral interests by taxing authorities requires title searches which are extremely burdensome and, where no public tract index is available, prohibitively expensive. This result is caused in part by the decision in Wichelman v. Messner, 1957, 250 Minn. 88, 83 N.W. (2d) 800, where the so called "40 year law" was held inapplicable to mineral interests owned separately from surface interests. On the basis of the above findings, and for the purpose of requiring mineral interests owned separately from surface interests to contribute to the cost of government at a time when other interests in real property are heavily burdened with real property taxes, the legislature concludes that the taxation of severed mineral interests as provided in section 273.13, subdivision 2a is necessary and in the public interest, and provides fair taxation of a class of real property which has escaped taxation for many years. The legislature further concludes that such a tax is not prohibited by Minnesota Constitution, Article 10, Section 2. The legislature concludes finally that the amendments and repeals made by Laws 1973, Chapter 650 to sections 93.52 to 93.58, are necessary to provide adequate identification of mineral interests owned separately from the surface and to prevent the continued escape from taxation of obscure and fractionalized severed mineral interests.

History: *1973 c 650 art 20 s 1; 1976 c 2 s 172*

272.04 MINERAL, GAS, COAL, AND OIL OWNED APART FROM LAND; SPACE ABOVE AND BELOW SURFACE.

Subdivision 1. When any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil, or other similar interests may be assessed and taxed separately from such surface rights and interests in such real estate, including but not limited to the taxation provided in section 273.13, subdivision 2a, and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

273.13 CLASSIFICATION OF PROPERTY.

Subd. 2a. Class 1b. "Mineral interest", for the purpose of this subdivision, means an interest in any minerals, including but not limited to gas, coal, oil, or other similar interest in real estate, which is owned separately and apart from the fee title to the surface of such real property. Mineral interests which are filed for record in the offices of either the county recorder or registrar of titles, whether or not filed pursuant to sections 93.52 to 93.58, constitute class 1b, and shall be taxed as provided in this subdivision unless specifically excluded by this subdivision. A tax of $.25 per acre or portion of an acre of mineral interest is hereby imposed and is due and payable annually. If an interest is a fractional undivided interest in an area, the tax due on the interest per acre or portion of an acre is equal to the product obtained by multiplying the fractional interest times $.25, computed to the nearest cent. However, the minimum annual tax on any mineral interest is $2. No such tax on mineral interests is due and payable on the following: (a) Mineral interests valued and taxed under other laws relating to the taxation of min-

erals, gas, coal, oil, or other similar interests; (b) Mineral interests which are exempt from taxation pursuant to constitutional or related statutory provisions. Tax money received under this subdivision shall be apportioned to the taxing districts included in the area taxed in the same proportion as the surface interest mill rate of a taxing district bears to the total mill rate applicable to surface interests in the area taxed. The tax imposed by this subdivision is not included within any limitations as to rate or amount of taxes which may be imposed in an area to which the tax imposed by this subdivision applies. The tax imposed by this subdivision shall not cause the amount of other taxes levied or to be levied in the area, which are subject to any such limitation, to be reduced in any amount whatsoever. The tax imposed by this section is effective for taxing years beginning January 1, 1975. Twenty percent of the revenues received from the tax imposed by this section shall be distributed under the provisions of section 116J.64.

298.26 TAX ON UNMINED IRON ORE OR IRON SULPHIDES.

In any year in which at least 1,000 tons of iron ore concentrate is not produced from any 40-acre tract or governmental lot containing taconite or iron sulphides, a tax may be assessed upon the taconite or iron sulphides therein at the mill rate prevailing in the taxing district and spread against the assessed value of the taconite or iron sulphides, such assessed value to be determined in accordance with existing laws. The amount of the tax spread under authority of this section by reason of the taconite and iron sulphides in any tract of land shall not exceed $10 per acre.

History: *1941 c 375 s 4; 1947 c 93 s 4; 1977 c 423 art 10 s 14*

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No. 83-1348

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

COUNTY OF ST. LOUIS, STATE OF MINNESOTA,

and

MINNESOTA CHIPPEWA TRIBE,

Petitioners,

v.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does application of the Minnesota tax on severed mineral interests—imposed by Minn. Stat. § 273.13, Subd. 2a, at the rate of $.25 per acre—to mineral interests owned by a federal land bank violate 12 U.S.C. § 2055, which exempts federal land banks from all forms of federal, state and local taxation "except taxes on real estate . . . to the same extent, *according to its value,* as other similar property held by other persons is taxed"? (Emphasis added)

The Minnesota Supreme Court held that the tax violates 12 U.S.C. § 2055.

2. Alternatively, does the tax violate the equal protection and due process clauses of the fourteenth amendment to the U.S. Constitution and the uniformity and due process clauses of the Minnesota constitution because some of the mineral interests on which it is imposed have at most "speculative" or "uncertain" value?

The Minnesota Supreme Court did not reach Question 2 because of its holding with respect to Question 1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1348

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE PAYMENT OF THE TAX ON MINERAL INTERESTS ASSESSED PURSUANT TO MINN. STAT. § 273.13, SUBDIVISION 2a, AND REMAINING DELINQUENT ON THE FIRST MONDAY IN JANUARY, 1977, 1978 AND 1979, FOR THE COUNTY OF ST. LOUIS, STATE OF MINNESOTA

COUNTY OF ST. LOUIS, STATE OF MINNESOTA,

and

MINNESOTA CHIPPEWA TRIBE,

Petitioners.

v.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Respondent (the "Bank") is a federally chartered instrumentality of the United States. 12 U.S.C. § 2011. It was

established in 1917 pursuant to the Federal Farm Loan Act of 1916[1] and was continued under the Farm Credit Act of 1971[2]. The Bank is engaged in making long-term real estate mortgage loans to farmers, ranchers, growers and rural residents located in the Seventh Farm Credit District (Michigan, Minnesota, North Dakota and Wisconsin). The Bank's loans are originated through 55 Federal Land Bank Associations ("Associations") over which the Bank has certain supervisory responsibilities. The loans are generally made for the purpose of enabling the borrowers to acquire or improve farm, rural residence or farm-related business real property.

The Bank's purpose is to provide long-term mortgage loans for agricultural and rural residence purposes at the lowest possible interest rate. The Bank and the Associations are organized in a manner similar to cooperatives. A borrower is required to become a member of his Association and to purchase stock (in the case of farm loans) or participation certificates (in the case of rural residence and farm-related business loans) in his Association in an amount equal to five percent of the loan. The Association, in turn, is required to purchase a like amount of stock or participation certificates in the Bank. The Association and Bank stock and participation certificates are retired when the loan is repaid. All of the stock of the Bank is owned by the Associations. The Bank, after providing for reserves as required by law and for net worth objectives necessary

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[1]Act of July 17, 1916, ch. 245, 39 Stat. 360.

[2]Pub. L. 92-181, 85 Stat. 583. Pub. L. 92-181, as amended, is currently codified at 12 U.S.C. §§ 2001 *et seq.* A general history of the federal farm credit system is set forth in *United States v. Mississippi Chemical Corp.*, 405 U.S. 298, 301-305 (1972).

for sound business operations, may distribute any net earnings among the Associations in the form of dividends. The Associations in turn may distribute dividends to their shareholder-borrowers[3].

During the Depression of the 1930's, the Bank became the unwilling owner of many farms acquired by foreclosure or deed in lieu of foreclosure. The Bank sold these farms to farmer-operators as rapidly as possible at fair prices in relation to prevailing market values. Many of these sales were at prices lower than the unsatisfied debts held by the Bank. With the hope of ultimately recovering all or a part of the resulting losses through eventual mineral development, the Bank adopted the policy of reserving mineral interests when selling properties.[4] At the end of 1980, the Bank owned about 3,200 severed mineral interests in the State of Minnesota. These interests were scattered through 85 of the 87 counties in the State and covered about 484,000 acres. The Bank's Minnesota mineral interests have produced almost

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[3]Most of the loans made by the Bank since 1969 have provided for variable interest rates, which means that the interest rates on the loans are adjusted from time to time to reflect the Bank's cost of borrowing funds and its general financial experience. As a result of the Bank's variable interest rate loans and its organization in a manner similar to a cooperative, the earnings of the Bank inure to the benefit of its borrowers in the form of reduced interest rates or dividends. *See* Pet. at A5-6 (Minnesota Supreme Court decision).

[4]The Bank's reservation created a "severed mineral interest," which is an interest in minerals that is separate from the ownership of the surface. Most of the Bank's mineral interests are 50% interests. The remaining 50% interest is usually owned by the surface owner. The reservation of severed mineral interests by a federal land bank is a valid method of increasing the Bank's recoveries on defaulted obligations, furthers the Bank's governmental functions, and is subject to the normal rules set forth in 12 U.S.C. § 2055 with respect to the tax status of the Bank's property. *Federal Land Bank of Wichita v. Board of County Commissioners*, 368 U.S. 146, 152, 155-156 (1961).

no income for the Bank. *See* Pet. at A6 (Minnesota Supreme Court decision).

Minn. Stat. § 273.13, Subd. 2a, imposes an annual tax of $.25 per acre on severed mineral interests not otherwise taxed. This statute was enacted in 1973 and became effective beginning with taxes assessed in 1975 and payable in 1976. Pursuant to the statute, taxes on severed mineral interests owned by the Bank have been assessed each year in many counties of the State. The Bank did not pay the assessed taxes, and filed answers in district court tax delinquency proceedings with respect to them. The tax delinquency proceedings relating to taxes assessed in St. Louis County for the years 1975-1977 were transferred from district court to the Minnesota Tax Court. The Bank contended, *inter alia*, that the tax as applied to its property violates 12 U.S.C. § 2055, which provides in relevant part:

> *Every Federal land bank* and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom *shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate* held by a Federal land bank or a Federal land bank association *to the same extent, according to its value, as other similar property held by other persons is taxed.* (Emphasis added)

The Bank's position is that under 12 U.S.C. § 2055 a real estate tax may not be imposed upon the Bank's property unless it is a tax related to the value of the property. Since severed mineral interests in Minnesota vary greatly in value,[5] a tax on those interests measured by acreage is not

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[5]The Tax Court found that severed mineral interests "vary greatly in value depending upon the type of minerals that geologists reasonably anticipate are beneath the surface and the cost of extracting these minerals." Pet. at A18.

a tax related to value and, as applied to the Bank, violates 12 U.S.C. § 2055. The Minnesota Tax Court held adversely to the Bank's position. On appeal the Minnesota Supreme Court reversed the Tax Court, holding that the Bank is exempt from tax under 12 U.S.C. § 2055.

REASONS FOR DENYING THE WRIT

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR GRANTING THE WRIT AND THIS CASE DOES NOT INVOLVE AN IMPORTANT QUESTION OF FEDERAL LAW THAT NEEDS TO BE SETTLED BY THIS COURT

Petitioners (the "State") have not identified any ground set forth in Rule 17 for the exercise of discretion to review this case. The decision of the Minnesota Supreme Court is clear and well-reasoned; the court held that "since the severed mineral interest tax pursuant to § 273.13, subd. 2a, is unrelated to value, section 2055 precludes its imposition on the Bank's interests." Pet. at A9.

This decision does not conflict with the decision of any other state court of last resort or federal court of appeals. *See* Sup. Ct. R. 17.1(b). Indeed, this is the first case in which the meaning of the "according to . . . value" language of 12 U.S.C. § 2055 has been in issue. *See* Pet. at A7-8 (Minnesota Supreme Court decision). Moreover, the case does not present "an important question of federal law which has not been, but should be, settled by this Court." *See* Sup. Ct. R. 17.1(c). Minnesota and Colorado are the only states of which the Bank is aware that presently tax severed mineral interests by special statute on the basis of

area rather than value. *See* Colo. Rev. Stat. § 39-1-104(4) (1973) (if no value can be readily determined for purposes of *ad valorem* taxation, a minimum valuation of $1.00 per acre is to be used). The issue presented in this case is thus not likely to be a recurring one. In short, this case involves the application of statutory language that has never before been applied and that has now been applied in the context of a tax that presently exists in only two states.

The State argues simply that the decision of the Minnesota court is incorrect on the alternative grounds that (a) Section 2055 does not require that real estate taxes bear any relationship to value or (b) if Section 2055 does require a relationship to value, that requirement is satisfied in this case because the Minnesota tax is allegedly a "minimum" tax appended to an *ad valorem* tax system. We address the two grounds in Parts II and III, respectively.

II.

SECTION 2055 REQUIRES THAT ANY REAL ESTATE TAX IMPOSED ON A FEDERAL LAND BANK BE RELATED TO VALUE

Section 2055 provides in substance that (1) a federal land bank is "exempt from Federal, State, municipal, and local taxation," except that (2) real estate held by a bank may be taxed "to the same extent . . . as other similar property held by other persons is taxed," but (3) if, and only if, the real estate is taxed "according to its value." Thus, a real estate tax imposed upon the Bank must be both nondiscriminatory (Clause 2) *and* related to value (Clause 3). The Bank is exempt from the Minnesota tax because that tax is not imposed upon real estate "according to its value" and thus fails to satisfy the requirement stated in Clause 3.

A. The Legislative History cited by the State does not Bear upon the "According to . . . Value" Language of the Statute.

Ignoring the explicit requirements of Section 2055, the State argues that the debate in Congress surrounding the enactment of Section 2055 and its antecedents "demonstrate[s], without qualification, that Federal land bank real estate is subject to fair, non-discriminatory real estate taxation." Pet. at 11. However, none of the legislative history to which the State refers is related to the statutory requirement that real estate be taxed "according to its value." The legislative history consequently has no bearing upon the issue presented in this case.

The provisions of 12 U.S.C. § 2055 originated in Section 26 of the Federal Farm Loan Act of 1916.[6] The State relies upon statements made in the Senate floor debate on the 1916 bill. *See* Pet. at 11-13. These statements, however, are unrelated to the "according to . . . value" language of the statute and have very little to do with real estate taxation.

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[6]Section 2055 was adopted in 1971 as part of the Farm Credit Act of 1971, Pub. L. 92-181, 85 Stat. 583. *See* Title I, § 1.21, 85 Stat. 590. The 1971 law is a recodification of provisions formerly found at 12 U.S.C. §§ 931 and 933. The intention of Congress in 1971 was to reenact existing law with certain minor technical corrections. H.R. Rep. No. 92-593, 92d Cong., 1st Sess. 19 (1971); S. Rep. No. 92-307, 92d Cong., 1st Sess. 22 (1971). Sections 931 and 933 substantially embodied the first and third paragraphs of Section 26 of the Federal Farm Loan Act of 1916, ch. 245, 39 Stat. 360. *See* 39 Stat. 380. The third paragraph of Section 26 was apparently derived from a proviso of Section 41 of the National Bank Act of 1864. *See* Act of June 3, 1864, cr. 106, § 41, 13 Stat. 99, 111-112; Rev. Stat. § 5219. This proviso, which applied to national banking associations until its repeal in 1969, was that the Act did not "exempt the real estate of [national banking] associations from either state, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed." *See* 12 U.S.C.A. § 548 (West 1969).

The debate focused on whether Congress had the constitutional power to—and should as a matter of policy—exempt from taxation the revenues, mortgages and capital stock of federal land banks and the bonds that they were authorized to issue.[7]

The State refers to a statement of Senator Dillingham of Vermont. Pet. at 11-12. The statement relates to the taxation of mortgages rather than real estate. The State also refers to a statement of Senator Cummins of Iowa. Pet. at 12. Senator Cummins was one of the leaders in opposition to *any* tax-exemption for federal land banks, and his statement relates to the tax status of property generally rather than real estate. *See* 53 Cong. Rec. 7306 (1916). Finally, the State refers to a statement of Senator Hollis of New Hampshire. Pet. at 12-13. Although Senator Hollis does refer to real estate, his statement does not aid the State's position because he opposed the exemption of real estate from *any* form of taxation.

In short, the 1916 debate contributes nothing to an understanding of the "according to . . . value" language of the statute. Neither is anything added by the 1971 legislative history cited by the State. *See* Pet. at 13-15. As that legislative history clearly establishes, Congress did not review, and did not intend to modify, *any* aspect of the tax status of federal land banks in 1971. Moreover, the "according to . . . value" language of the 1916 legislation was preserved intact.

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[7]The power of Congress to create federal land banks and to provide for their exemption from state and local taxation has since become well established. *See, e.g., Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95 (1941); *Federal Land Bank of New Orleans v. Crosland*, 261 U.S. 374 (1923); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

B. The Decision of the Minnesota Supreme Court is Consistent with Applicable Principles of Statutory Construction, the Judicial Construction of Similar Language, and Important Federal Policies.

1. Principles of Statutory Construction.

The Minnesota Supreme Court's application of Section 2055 to this case reflects two fundamental principles of statutory construction. First, the court applied the "plain meaning" of the statute. *See* Pet. at A8 (Minnesota Supreme Court decision). This Court has long recognized that the function of a court when confronted by a statute with language so plain as to require no construction is to apply the statute according to its terms. *See, e.g., Caminetti v. United States,* 242 U.S. 470, 485 (1917); *Helvering v. City Bank Farmers Trust Co.,* 296 U.S. 85, 89 (1935).

Second, the Court gave meaning and effect to each clause of the statute. *See* Pet. at A8 (Minnesota Supreme Court decision). Courts are obliged to give effect, if possible, to every provision of a statute and to avoid a reading that renders part of a statute a mere redundancy. *See, e.g., Jarecki v. G. D. Searle & Co.,* 367 U.S. 303, 307-308 (1961); *United States v. Menasche,* 348 U.S. 528, 538-539 (1955). The construction of Section 2055 adopted by the Minnesota court gives weight and content to all of the statutory language by recognizing that the statute imposes two distinct requirements with respect to the real estate taxation of federal land banks: the tax must be *both* related to value *and* nondiscriminatory. The State's construction, on the other hand, effectively deprives the "according to . . . value" language of any meaning. If Congress had

intended simply to require that real estate taxes imposed upon federal land banks be nondiscriminatory, as the State asserts, it could have omitted the clause "according to . . . value" and authorized the imposition of real estate taxes on federal land banks "to the same extent as other similar property held by other persons is taxed."[8]

The State suggests that "practical" difficulties associated with the valuation of severed mineral interests justify taxation of the Bank's interests on the basis of area even though Section 2055 requires that real estate taxes upon the Bank be levied according to value. Pet. at 25-26. Practical difficulties, if they indeed exist, cannot justify ignoring the plain meaning of Section 2055. Moreover, it is doubtful that the *ad valorem* taxation of severed mineral interests is impracticable. Minnesota and Colorado are the only states of which the Bank is aware that presently tax severed mineral interests by special statute on the basis of area rather than value. See pgs. 5-6, *supra*. The principal difficulty in taxing severed mineral interests—identifying their existence and ownership—has been resolved in Minnesota by the enactment of registration provisions that provide for forfeiture of the interests in the event of failure to register. *See* Minn. Stat. §§ 93.52-93.58. It is also noteworthy that one of the reasons for the enactment of the Indiana registration statute sustained in *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), was to facilitate the *ad valorem* taxation of severed mineral interests. *See* 454 U.S. at 529.

The correctness of the decision of the Minnesota court is underscored and confirmed by this Court's subsequent

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[8]The State apparently concedes that its position may require the Court to disregard the "according to . . . value" language as "mere surplusage." Pet. at 25.

decision in *Aloha Airlines, Inc. v. Director of Taxation*, 78 L.Ed.2d 10, 104 S. Ct. 291 (1983). In *Aloha* the Court unanimously held that a Hawaii tax imposed upon the gross income of airlines is preempted by 49 U.S.C. § 1513(a). In reaching this conclusion, the Court emphasized that it was bound by the "plain language" of the federal statute and that it was not free to consider either the reasons for the action taken by Congress or its impact upon state tax systems. *See* 78 L.Ed.2d at 15 n.6, 16 n.10, 104 S. Ct. at 294 n.6, 295 n.10. The principles set forth in *Aloha* are clearly applicable here.

2. The Judicial Construction of Similar Language in other Federal Statutes and State Constitutions.

As we have noted, there are no reported cases interpreting the "according to . . . value" language of Section 2055 or its predecessor provision of the Federal Farm Loan Act of 1916. However, until 1969 the National Bank Act included language substantially identical to Section 2055. *See* note 6, *supra*. Although the issue in this case was not directly presented in cases arising under the National Bank Act, these cases do indicate that real estate taxes must be related to value. In *Land Title Bank & Trust Co. v. Ward*, 20 F. Supp. 810 (E.D. Pa. 1937), the issue was whether the phrase "according to its value" prevented a state from applying to a national bank that state's general rule that real estate taxpayers are personally liable for such taxes. The court held that the phrase did not preclude the application of the state's general rule, stating that the purpose of the statutory phrase was not to limit the manner of collection of the tax, but "to limit the tax which a state might levy to

an ad valorem tax levied upon the same basis on all real estate similarly situated in the taxing district." *Id.* at 812-813. The court stated that the statute allowed state and local taxation of the real estate of national banks if "such taxes shall be levied according to a definite percentage of the value of the real estate taxed, and . . . both the rate and basis of valuation applied to the real estate of a national bank shall be the same as those applied to other real estate within the taxing district similarly situated." *Id.* at 813. *Accord Miners National Bank of Butte v. Silver Bow County*, 116 Mont. 31, 148 P.2d 538, 539 (1944).

A number of old state-court cases establish that a property tax assessed on the basis of area (or other geometric criteria) is not a tax on real estate "according to its value." Most of these cases arise under state constitutions that required, in language substantially identical to that of Section 2055, that real estate be assessed according to value.[9] *See State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898); *Stinson v. Smith*, 8 Minn. 326 (1863); *McCann v. Merriam*, 11 Neb. 241, 9 N.W. 96 (1881); *Atlantic & North Carolina R.R. v. Board of Commissioners*, 75 N.C. 474 (1876); *Pittsburgh, Cincinnati & St. Louis R.R. v. State*, 49 Ohio St. 189, 30 N.E. 435 (1892); *State v. Railroad Corporations*, 4 S.C. 376, 377 (1873); *McBean v. Chandler*, 9 Heisk. 349, 24 Am. Rep. 308 (Tenn. 1872).

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[9]The age of these cases is significant. They were decided during the era in which the National Bank Act of 1864 was enacted and under constitutions adopted during the same period. Thus, the interpretations placed upon the state constitutions are particularly good evidence of the intentions of the drafters of the National Bank Act and presumably of the legislative intent underlying the Federal Farm Loan Act of 1916 as well.

3. Federal Policies.

The Minnesota Supreme Court's construction of Section 2055 adheres to important federal policies underlying the establishment of federal land banks and their exemption from federal, state and local taxation. The Minnesota court clearly recognized that—because of the important role that federal land banks play as federal instrumentalities,[10]—special rules apply in construing statutory provisions relating to their tax status. Pet. at A10-11 (Minnesota Supreme Court decision).

When a federal instrumentality—such as the Bank—is generally exempt from taxation—as is the Bank under Section 2055—there must be a clear, express and affirmative statement of congressional intent to waive that exemption, and any purported waiver must be strictly construed against the taxing authority. *Federal Reserve Bank of St. Louis v. Metrocentre Improvement District No. 1,* 657 F.2d 183, 186 (8 Cir. 1981), *aff'd mem.,* 455 U.S. 995 (1982); *United States v. City of Adair,* 539 F.2d 1185, 1189 (8 Cir. 1976); *Reconstruction Finance Corp. v. Texas,* 229 F.2d 9, 12 (5 Cir.), *cert. denied,* 351 U.S. 907 (1956); *Board of Directors of Red River Levee v. Reconstruction Finance Corp.,* 170 F.2d 430, 433 (8 Cir. 1948). In this case, there has been no showing at all that Congress intended to permit the imposition of real estate taxes unrelated to value, and the statutory language demonstrates that the congressional intent was exactly the opposite. Furthermore, this Court held in *Federal Land Bank of St. Paul v. Bismarck Lumber Co.,* 314 U.S. 95, 100

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[10] *See Federal Land Bank of St. Paul v. Bismarck Lumber Co.,* 314 U.S. 95, 102 (1941); 12 U.S.C. § 2011.

(1941), that a "broad construction" of the predecessor of Section 2055 is indicated "by Congress's intention to advance credit to farm borrowers at the lowest possible interest rate."

C. The Ohio Oil and Reconstruction Finance Corporation Decisions are Distinguishable.

The State relies heavily upon two decisions of this Court as a basis for seeking review of the present case. The two cases are *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930), and *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204 (1946). Neither case supports the State's position.

In *Ohio Oil* the Court held that the equal protection and due process clauses of the fourteenth amendment do not require that taxes be imposed upon an *ad valorem* basis.[11] This holding is inapplicable to the present case. The fact that the states are not required by the fourteenth amendment to adopt *ad valorem* tax systems does not mean that Section 2055 permits the imposition of taxes unrelated to value upon the property of federal land banks. In this case, the constitutional power of the State to impose a tax unrelated to value has been limited by federal statute.[12]

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[11]The Minnesota Supreme Court has similarly held that the uniformity clause of the Minnesota constitution (Art. X, § 1) does not require that property taxes be imposed according to value. *See Contos v. Herbst*, 278 N.W.2d 732 (Minn. 1979), *appeal dismissed*, 444 U.S. 804; Pet. at A40, A54-58.

[12]The possibility of such a limitation was contemplated by the Court in *Ohio Oil*:

> The applicable principles are familiar. The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, *and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution*, the States have the attribute of sovereign powers in devis-

In *Reconstruction Finance Corp.*, the Court considered a provision of the Reconstruction Finance Corporation Act relating to the taxation of real property owned by the RFC that was substantially identical to Section 2055. The issue was whether certain heavy machinery was "real property" and therefore subject to taxation under the federal statute. The Court held that Congress intended local law to apply in determining the scope of the term "real property" for purposes of the statute. The tax in question was clearly an *ad valorem* tax.[13] Acccordingly, no issue was presented as to whether the tax satisfied the "according to . . . value" requirement of the federal statute, and the decision has no bearing upon the present case. If the State means to suggest in citing *RFC* that local law should be applied in construing and applying the "according to . . . value" requirement of Section 2055, it cannot prevail even if it is correct because the Minnesota Supreme Court has held in this case that the tax on severed mineral interests is *not* imposed "according to . . . value."[14]

III.

THE TAX IS NOT IMPOSED ACCORDING TO VALUE

The State argues alternatively that, if Section 2055 requires that real estate taxes be related to value, that

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ing their fiscal systems to insure revenue and foster their local interests.

281 U.S. at 159 (Emphasis added). Here, of course, Minnesota seeks to trench upon the prerogatives of the national government as embodied in the tax exemption provided by Section 2055.

[13] *See Appeal of Defense Plant Corp.*, 350 Pa. 520, 39 A.2d 713 (1944), the lower court decision from which the *RFC* case was appealed.

[14] *See* Pet. at A9. As the Minnesota Supreme Court recognized in the present case (Pet. at A9 n.12), this holding was clearly foreshadowed by *Contos v. Herbst, supra.* Pet. at A54-58.

requirement is satisfied in this case because the Minnesota tax is allegedly a "minimum" tax appended to an *ad valorem* tax system. Pet. at 18-23, 25.[15] The State, however, cites no authority holding that a "minimum" tax is consistent with a constitutional or statutory requirement that taxes be imposed according to value.[16]

Moreover, the State's own hypothetical computations in the court below demonstrate that the tax cannot be dismissed as a "minimum" tax appended to an *ad valorem* tax system. On the basis of assumed assessment classifications and mill rates, the State has determined (a) that the value-related tax on a 40-acre tract with a value of $.15 per acre might reasonably be expected to be $.18; (b) that the value-related tax on a 40-acre tract with a value of $1.25 per acre might reasonably be expected to be $1.50; and (c) that the value-related tax on a 40-acre tract with a value of $50.00 per acre might reasonably be expected to be $60.00.[17] By contrast, the area-related tax at issue

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[15]The State liberally cites the decision of the Minnesota Supreme Court in *Contos v. Herbst, supra,* in discussing this point. Although the Minnesota court relied in *Contos* upon a trial court finding that all mineral interests *have* value in holding that the tax is constitutional, the court clearly implied that the tax is not imposed *according* to value, and that conclusion was made explicit in deciding the present case. See note 14 and accompanying text, *supra.*

[16]The State suggests that the Minnesota court imposed a "strict standard" that goes beyond the requirements of Section 2055. *See* Pet. at 21. This, of course, is not the case. The decision of the Minnesota court simply applies the explicit requirement of Section 2055 that taxes upon the Bank's real estate be levied according to value. This case does not present questions arising from the use of an imprecise or incorrect valuation method. The Minnesota statute makes no provision for valuation at all. The State's suggestion that "practical" difficulties justify taxing severed mineral interests on a basis other than valuation is incorrect. *See* p. 10, *supra.*

[17]This information is taken from the State's Petition for Rehearing to the Minnesota Supreme Court. In that document the State acknowledged that a value of $50.00 per acre would be "high" and that "most" mineral interests would be valued at closer to $1.25 per acre.

in this case on a 40-acre tract, assuming the ownership of a 50% mineral interest, would be $5.00 (40 acres x $.25 x 50%). Thus, the purported "minimum" tax is 27 times greater than the expected value-related tax if the value were $.15 per acre and 3⅓ times greater than the expected value-related tax if the value were $1.25 per acre. Under these circumstances, the tax on severed mineral interests cannot reasonably be reconciled with an *ad valorem* tax system.

IV.

THE TAX ON SEVERED MINERAL INTERESTS VIOLATES THE U.S. CONSTITUTION AND MINNESOTA CONSTITUTION

The second question presented by this case is whether the tax violates the equal protection and due process clauses of the fourteenth amendment to the U.S. Constitution and the uniformity and due process clauses of the Minnesota Constitution. Since the Minnesota Supreme Court decided the question under Section 2055 favorably to the Bank, it did not reach the constitutional question. Pet. at A3, A11. However, if the State's Petition were granted, the Bank would argue, as an alternative ground for affirmance of the Minnesota Supreme Court, that the tax is unconstitutional.[18]

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[18]The constitutionality of the tax was upheld in *Contos v. Herbst, supra*, in reliance upon a trial court finding that all mineral interests have value. In the present case the trial court found only that all mineral interests have at least "speculative" or "uncertain" value and implied that all mineral interests do *not* have "measurable present market value." The trial court held, however, that "speculative" or "uncertain" value is sufficient to satisfy constitutional requirements. *See* Pet. at A18. The Bank contended before the Minnesota Supreme Court that

CONCLUSION

There are no reasons for granting the Writ in this case. The case does not involve an important question of federal law and there is no conflict between the decision of the Minnesota Supreme Court and any other federal or state court. The decision of the Minnesota Supreme Court is consistent with applicable rules of statutory construction and with judicial decisions under the National Bank Act and state constitutional provisions similar to Section 2055. The State clearly has not shown that the decision of the Minnesota Supreme Court is incorrect. Accordingly, the Petition should be denied.

Dated: March 15, 1984.

Respectfully submitted,

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the trial court was incorrect in holding that "speculative" or "uncertain" value satisfied constitutional requirements and, in any event, that the trial court's finding that all severed mineral interests have "speculative" or "uncertain" value is clearly erroneous.